

US PATENT & TRADEMARK OFFICE



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1873 - 1880

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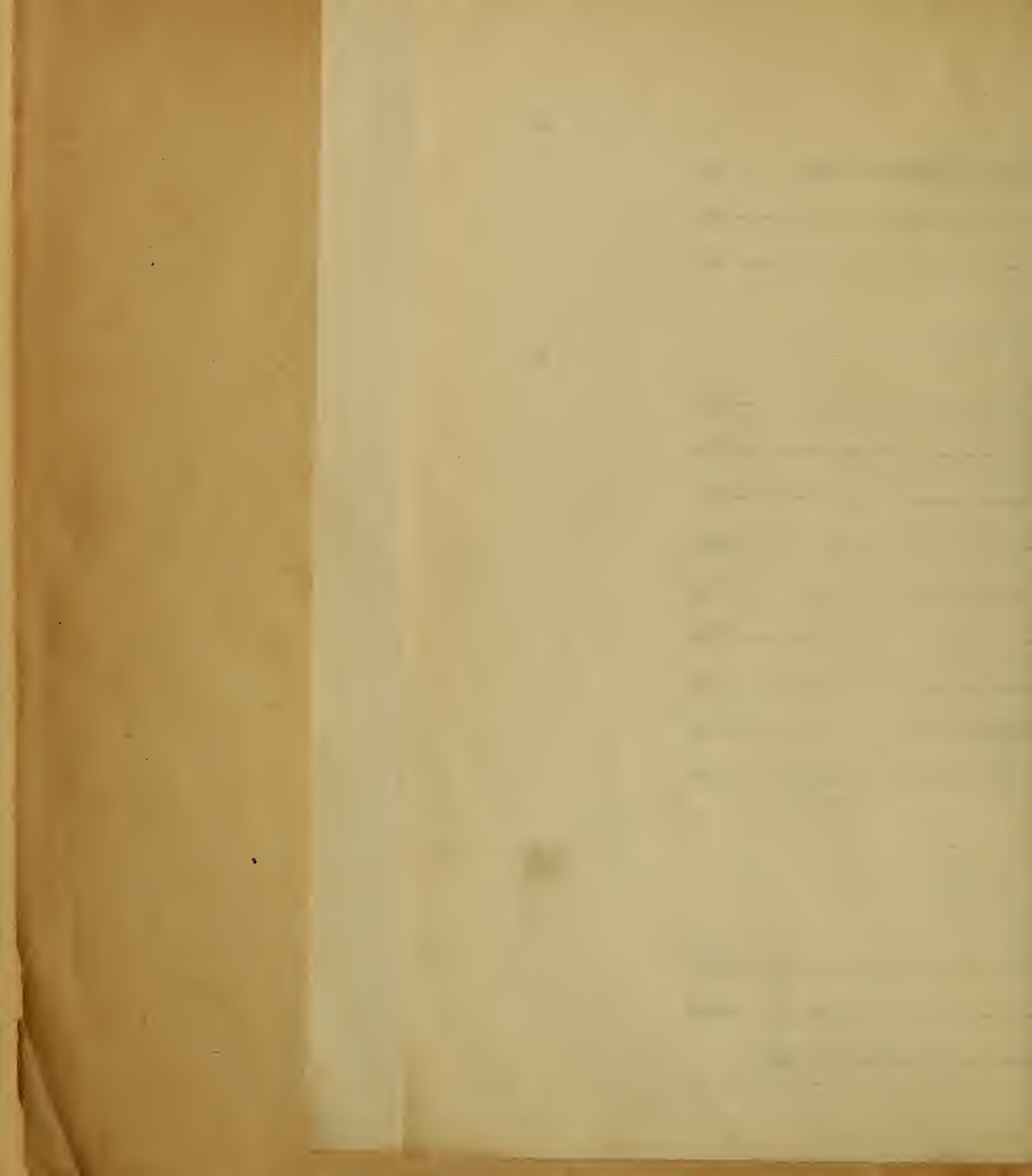
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A P P L I C A T I O N
of
J O H N E. S P E N C E R,

Decided July 15, 1873.

Recorded Vol. 14, Page 132.

-----oOo-----

LEGGETT, COMMISSIONER:

Applicant says that his trade mark consists of a picture of a lathe "having the overhead counter-shaft laid across the bed of the lathe," with the words "John E. Spencer" over it and the words "Standard Lathes" under it. The question is whether this alleged trade-mark is sufficiently distinctive in character to distinguish applicant's lathes from those of other manufacturers.

It is common for manufacturers to advertise their products by means of pictures representing them printed in public journals, upon business cards, and upon the wrappers of small articles, together with the name of the manufacturer or dealer, and the name of the article. This is true of lathes, as may be seen by consulting almost any number of the Iron Age -- or other similar journals.

There is nothing more than this in this trade-mark. The overhead shaft is an essential part of the lathe. It is sold with the lathe and is usually provided with a cone-band-wheel, and a

fast and loose pulley such as applicant's picture exhibits. The words "Standard Lathes" are not sufficient in combination with this representation of a lathe to constitute the whole a trade-mark at common law, because they are descriptive of quality, and besides are in common use as descriptive of the quality of lathes made for turning nuts and screws of a given standard.

The decision of the Examiner of Trade Marks is affirmed.



A P P L I C A T I O N
of
J. J. M A S O N & C O.,

Decided Dec. 22, 1873.

Recorded Vol. 14, Page 283.

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LEGGETT, COMMISSIONER:

I am clearly of the opinion that this alleged trade-mark is only a colorable variation from that cited by the Examiner, and should not therefore be registered.

His decision refusing registry is affirmed.

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A P P L I C A T I O N
of
R O Y A L B A K I N G P O W D E R C O.,

Decided April 11, 1874.

Recorded Vol. 14, Page 390.

-----oOo-----

THACHER, ACTING COMMISSIONER:

The essential feature of the trade mark for which registration is asked, is the word "Liebig's". This is a well known term which has been extensively used, in this and other countries, for the purpose of distinguishing certain preparations put up under receipts of the famous chemist, Baron Liebig. There is no pretense that the extracts manufactured by the company, applicant in this case, are preparations of Baron Liebig. But the use of this term will convey this idea to the public, and to this extent is deceptive in nature. For this reason, if no other, it is not a proper trade mark.

The decision of the Examiner is affirmed.



Trade name

A P P L I C A T I O N
of
M A R Y E. S N Y D E R,

Decided May 5, 1874.

Recorded Vol. 14, Page 412.

-----oOo-----

LEGGETT, COMMISSIONER:

The examiner objects to the registration in this case for two reasons: first, that it is either descriptive or deceptive; and second, that it is a mark not designed for use upon any kind of merchandise.

It seems that the party has started business in Chicago and designates herself "Boston Dental Association". The object of this title, unless the applicant represents an association in Boston, is evidently designed to mislead the public by inducing it to give to her the confidence that would naturally be rendered to such an association of persons. It certainly would be improper for the Government to lend its aid to this questionable kind of business. But without extending this objection, which certainly should be enough to defeat the application, it is sufficient to say that the Examiner's objections are well taken.

If the title does not represent an association, it is

deceptive, and should not have the sanction of legal registry. If it does ~~not~~ designate an association, then it is descriptive and cannot be claimed as a legal trade-mark.

The second clause, under section 77 of the Patent-Law, says "that the applicant shall cause to be recorded in the Patent Office the class of merchandise and the particular description of goods comprised in such class by which the trade mark has been or is intended to be appropriated."

The applicant fails to designate any goods or merchandise of any kind, which is to bear the mark of "Boston Dental Association". She simply claims it for use in advertising in newspapers and on cards, and for stenciling on fences, rocks, &c.

The decision of the examiner is affirmed.



A P P L I C A T I O N
of
J E R E M I A H R. L A W R E N C E

Decided Jan. 4, 1875.

Recorded Vol. 16, Page 263.

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SPEAR, ACTING COMMISSIONER:

The mark presented for registration is "Dr. Pipers' Paint". The name of the article of course cannot of itself constitute a trade-mark, and it is equally plain that the law prohibits the registration of a mere name of a person as a trade-mark. It does not appear ever to have been held that a mere name as that of John Smith could be a trade-mark though parts of proper names have been so held as in Howe vs. Howe Sewing Machine Co. (Cox Trade-Mark cases), where the word "Howe" was taken alone being an arbitrarily chosen part of a name. Now the word "Piper" is such part of a name, but the title is a common one and is commonly substituted for the Christian name of a person, so that the title with the surname is commonly used as the full name or the mere name of the person to whom it belongs.

The evident intent of the law is that a mark or name shall not be appropriated by one person, which is equally the

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property or right of another. I must regard the name, since part of it is a common surname and part a common title which takes the place of the Christian name, as a mere name which any person having that name and title could rightfully apply in the same way as applicant appears to apply this, and for this reason I must sustain the Examiner in refusing the registration.



A P P L I C A T I O N _
of
H E N R Y _ S A W Y E R,

Decided Jan. 6, 1875.

Recorded Vol. 15, Page 238.

-----oOo-----

SPEAR, ACTING COMMISSIONER:

In this trade-mark, the registration of which is refused by the Examiner, for the reasons that one word is the name of a person, and the other descriptive of the article to which the trade mark is to be attached. The latter part of the statement applicant denies, though I think, not successfully.

Referring to the specification I find that the mark is to be placed on a "Blueing or Chemical Compound" ~~x-x-x~~ for use in washing clothes." I see no other difference than the small one of form, between the words "Blue" and "Blueing".

I think the Examiner's position correct, and must affirm his decision.

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A P P L I C A T I O N
of
W. J. W I L C O X & C O.,

Decided Jan. 19, 1875.

Recorded Vol. 15, Page 262.

-----oOo-----

SPEAR, ACTING COMMISSIONER:

What is called a trade-mark in this application consists of a plug inserted in the bung of a cask containing the article to be sold.

I do not find in this any of the proper characteristics of a trade-mark. It is properly a part of the construction of the cask; and further does not appear to me to have any conspicuous or distinctive characteristic calculated to attract attention, and distinguish this article from others of its class as a proper trade-mark should.

I must affirm the decision of the Examiner and refuse the registration.

intention to adopt

A P P L I C A T I O N
of
G U S T A V E F. S C H U R M A N,

Decided Mar. 19, 1875.

Not Recorded.

-----oOo-----

SPEAR, ACTING COMMISSIONER:

This application is forwarded to the Commissioner by the Examiner for instructions upon the following point. Applicant alleges, not that he has already used, but that he intends to adopt the symbol or mark which he describes or shows. The Examiner refers to the 77th Section of the Act of 1870, which uses the phraseology "intend to adopt &c., &c." and relates to the registration of trademarks. He asks "Shall this literal reading govern? If so, does it not involve an absurdity in permitting an abstract symbol that is not adopted to be registered as a fac-simile of a mark upon merchandise?" The language of the statute is so explicit, and the same terms are so many times repeated that I see no way to avoid following the literal reading. For instance, the second requirement in the section and compliance with which must precede the registration is as follows:- "by causing to be recorded in the Patent Office the class of merchandise and the particular descrip-

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tion of goods comprised in such class, by which the trade-mark has been or is intended to be appropriated." The third clause uses the same terms.

"3rd. A description of the trade-mark itself, with fac-simile thereof, and the mode in which it has been or is intended to be applied and used."

Now if a mark cannot be registered unless it has already been applied to the merchandise, then I see no possible meaning or appropriateness in the use of the word "intended" in these clauses. As a mark may exist before it is applied to the merchandise I do not see any necessary absurdity in permitting the fac-simile of it to be registered. Therefore any person or firm stating in the words of the statute, that he "intends to adopt and use" a trade-mark for exclusive use within the United States, is entitled to registration upon such statement and compliance with the other requirements.

There seems to me to be no other course possible for the Office under the law as it now stands. With these instructions the case is returned to the Examiner for such further action as he shall think proper.

Print

A P P L I C A T I O N
of
E D W I N L. P A L M E R,

Decided March 29, 1875.

Recorded Vol. 15, Page 382.

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SPEAR, ACTING COMMISSIONER:

Applicant applies for registration of a print consisting of the words "Signal Service Barometer", which words applicant specifies are to be printed or stamped on the barometers made by him. It is clear that this print is not a label, nor of a nature of a label, in any ordinary signification of the term; nor does it denote the name of the manufacturer or place of manufacture, or style of goods. The words are rather of the nature of a trade-mark which might be registered as such, but for the fatal objection that they are descriptive of a certain class of articles now in existence. All those instruments of this class, used by the Signal Service might be properly denominated, and probably often are denominated signal service barometers. This applicant cannot therefore acquire any title to the exclusive use of these words.

The decision of the Examiner is therefore affirmed.

1845

THE
JOURNAL OF THE
SOCIETY OF THE
FRIENDS OF THE
AFRICAN

Vol. 1. No. 1.

Published by the Society of the Friends of the African.

The object of the Society is to promote the civilisation and improvement of the African people, and to secure the abolition of the slave trade and slavery. The Society was founded in 1808, and has since that time been engaged in various efforts to achieve these objects. It has published a journal, and has also been instrumental in the formation of other societies for the same purpose. The Society is now composed of many individuals of various ranks and professions, who are all united in the same noble cause. The journal is published quarterly, and contains a variety of interesting and useful articles. It is a valuable source of information for all who are interested in the progress of the African people, and in the efforts to improve their condition. The Society is now in the midst of a new and important enterprise, and it is hoped that the journal will continue to be a valuable aid in this work.

Label a Print

A P P L I C A T I O N
of
S E I D E N B E R G & C O M P A N Y,

Decided March 30, 1875.

Recorded Vol. 15, Page 396.

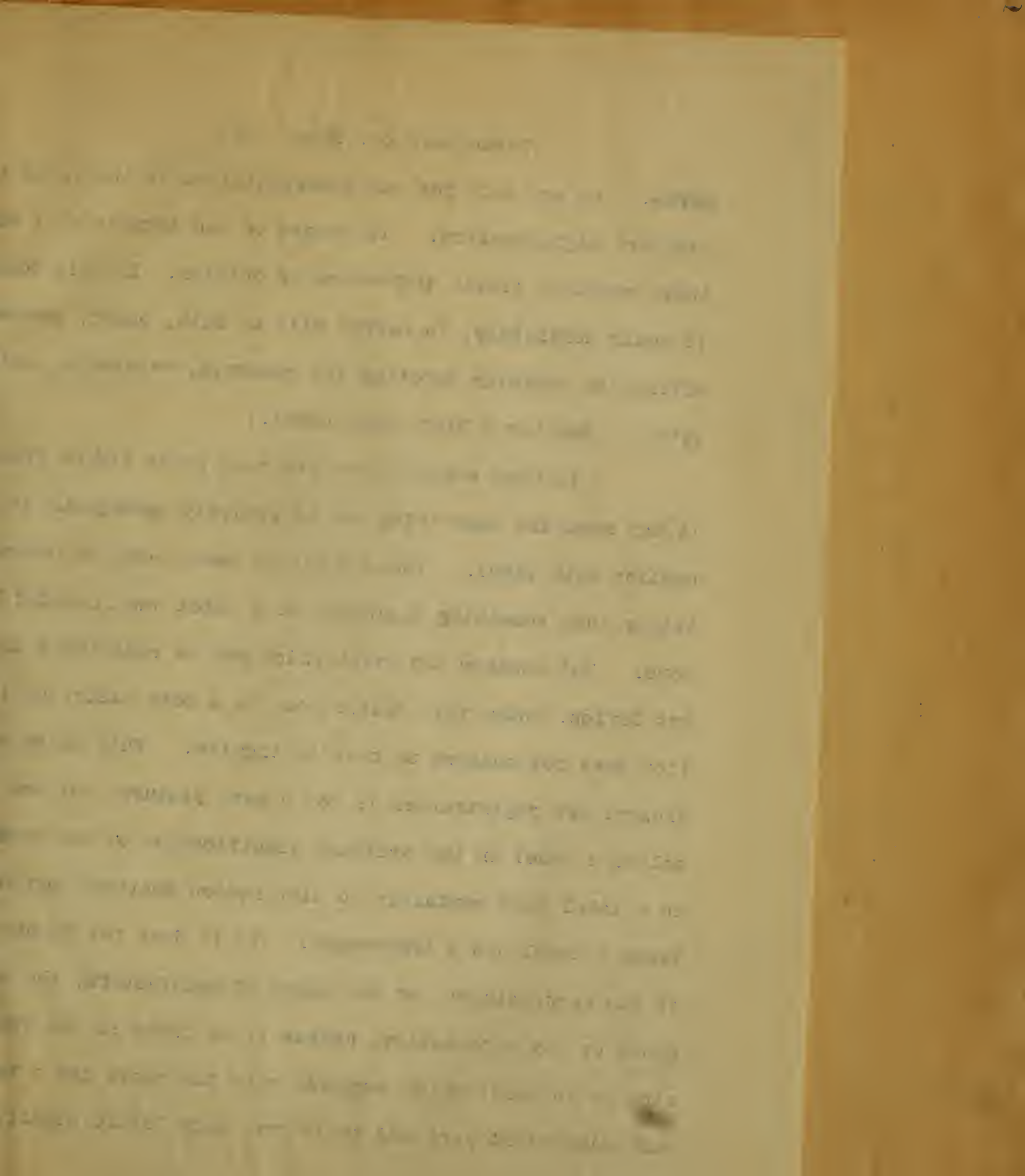
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SPEAR, ACTING COMMISSIONER:

The appellants in this case submit a print or picture on which certain words are inscribed and which they ask may be registered as a label. It contains in the centre, the representation of an ornamental shield having upon it a picture of a rose; on one side of the shield the figure of a man, and on the other that of a woman. Beneath this shield is another with the words "Key West" inscribed upon it. The border is formed of the representation of a rose bush in blossom on one side and on the other tobacco plants. There are barrels, boxes and other minor figures in the background. Above are the words and letters "La Rosa S.Y.C.A. Espanola", on the right "No. 19 Calle De Dey", on the left "Fabrica De Tabacos". The central portion first described consisting of the rose which is on the upper shield and the words "Key West" below has been already registered by this company as their trade mark; and they now ask that the remainder of the figure or picture may be regis-

tered as a label. The Examiner objects to this on the ground, that it is not a true label. By the Act approved June 18th, 1874, it was provided :- "That in the construction of this act the words "engraving," "cut," and "print" shall be applied only to pictorial illustrations or works connected with the fine arts, and no prints or labels designed to be used for any other articles of manufacture shall be entered under the copyright law, but may be registered in the Patent Office. And the Commissioner of Patents is hereby charged with the supervision and control of the entry or registry of such prints or labels, in conformity with the regulations provided by law as to copyright of prints, except that there shall be paid for recording the title of any print, or label, not a trade-mark, six dollars, which shall cover the expense of furnishing a copy of the record under the seal of the Commissioner of Patents, to the party entering the same."

While the statute relating to copyrights remains in force and governs the registration of these labels or prints, it is specially provided that these prints and labels which may be registered in the Patent Office, shall be those designed to be used for articles of manufacture other than pictorial illustrations, or ^{works} ~~marks~~ connected with the fine arts, and shall not be trade-



marks. We are left for our interpretation of the terms to their ordinary signification. In regard to the term label I suppose there would be little difference of opinion. In this connection it means definitely, "a narrow slip of silk, paper, parchment &c. affixed to anything denoting its contents, ownership, and the like." (Webster's Dictionary-Label.)

In what respect does the word print differ from this? It may mean the same thing and be entirely synonymous in this connection with label. The connection would seem to indicate certainly that something analogous to a label was intended by the word. But whether the print which may be registered in the Patent Office, under this section can be a mere pictorial illustration does not concern us here to inquire. This which applicants present for registration is not a mere picture, nor can it be called a label in the ordinary signification of the term. If it be a label then certainly no distinction whatever can be made between a label and a trade-mark. If it does not denote the name of the manufacturer, or the place of manufacture, the style of goods or any such matter, unless it be found in the words "Fabrica de Tobacos" which compared with the whole are a very small and unimportant part and would have very little significance for

an American Market.

On the other hand, both in the details and in the general character of the print, it has all the characteristics of a trade-mark. It is all of a piece with that part which applicants have already registered as their trade-mark. The fact upon which they lay so much stress, that they are not entitled to claim some of these elements as their trade-mark because they are not new with them but have already been used for like purposes by other parties, tells rather against them for their case. For this does not tend by any means to prove that this is not a trade-mark, or of the character of a trade-mark, and it would be obviously unjust, and an evasion of the law to permit parties to register as labels, trade-marks to which they would not be entitled as trade-marks because the property of others or of the public.

I must therefore sustain the action of the Examiner in refusing the registration desired.

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Print

A P P L I C A T I O N
of
H U G H M U L L I G A N,

Decided March 31, 1875.

Recorded Vol. 15, Page 389.

-----oOo-----

SPEAR, ACTING COMMISSIONER:

This applicant applies for registration of a print consisting of the words "Genl. G. Washington

Exhibition Watch, 1876.

Philadelphia."

It is evident that this is a mark arbitrarily chosen, and designed to be applied to applicant's watches to distinguish them from others in the market. Otherwise than as a print it has no significance whatever. If not a trade-mark with all its characteristics, it is purposeless and without meaning and appears to be exactly that which is excluded by the terms of the law.

The decision of the Examiner is affirmed.

New Matter

A P P L I C A T I O N
of
UNITED STATES CORSET COMPANY,

Decided May 5, 1875.

Recorded Vol. 15, Page 453.

-----e0e-----

SPEAR, ACTING COMMISSIONER:

It appears from the record in this case, that the trade-mark first represented in the application was refused registration on the grounds that the same mark had been used by other persons, appropriated to the same class of merchandise. Applicants now submit a new application containing a totally distinct Trade Mark and ask that the fee paid upon filing the first application be transferred to this. The second requirement of the law, a compliance with which is one of the necessary conditions of registration is, "the payment of the fee twenty-five dollars in the same manner and for the same purpose as the fee required for patents". The fees paid upon filing an application for patent were intended to cover the expenses of an examination into the novelty of the subject-matter contained in the application, and never in any case, are they refunded by reason of lack of novelty in such subject-matter. As the fee in a trade-mark application is paid for the

same purpose as the fee required for patent, it seems plain that it is not to be refunded, because the subject-matter contained in the application, is not found proper for registration. As applicants' request in this case, involves the refunding of the fee, it must be denied.

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THE
SCHOOL OF THE
MUSEUM OF NATURAL HISTORY
OF THE
CITY OF NEW YORK

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The first of the series of lectures on the history of the
Museum of Natural History of the City of New York
was given by the President of the Museum, Mr. J. A. Rehn,
on the 1st of November, 1875. The lecture was held in the
auditorium of the Museum, and was attended by a large
number of the members of the Museum, and by a number of
the public. The lecture was very interesting, and was
well received by the audience. The President of the
Museum, Mr. J. A. Rehn, is a very able and
experienced man, and his lecture was very well
received by the audience. The lecture was very
interesting, and was well received by the audience.

1875

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Label

A P P L I C A T I O N.
of

GREAT FALLS MANUFACTURING COMPANY,

Decided June 5, 1875.

Recorded Vol. 15, Page 477.

-----oOo-----

SPEAR, ACTING COMMISSIONER:

The law which provides for the registration of labels by the Commissioner of Patents, excepts from registration as prints or labels, such matter as may be a trade mark. What constitutes a trade mark must be decided, from the very nature of the case, by the registering officer and not by the applicant himself.

In this case I agree, without hesitation with the Examiner, that the subject matter is such as may be registered as a trade mark, and cannot therefore in accordance with the law be registered as a label.

Both the cases brought up by this applicant involve the same question, and on both the decision of the Examiner is affirmed.

Label

A P P L I C A T I O N
of
J A N E S C O T T,

Decided July 6, 1875.

Recorded Vol. 15, Page 508.

-----oOo-----

THACHER, COMMISSIONER:

In this case the applicant desires to register as a label a figure or drawing of a lily known as the Victoria Regia, the words "Victoria Regia" and the "The Imperial Cosmetic for the Complexion", together with a description of its qualities.

This case differs from the former one in the respect that it is very doubtful whether the distinctive words or title in the present application are actually descriptive of the quality of the article to which they are applied.

"May Apple Pills" is the correct name of a well known medical article; but it is exceedingly doubtful if the Victoria Regia Lily, or a fluid extract therefrom forms any essential part of this cosmetic. The plant is a native of South America, and is not an article of commerce. It would be necessary to extract the oil at the place of its growth, and the expense of making it a prominent ingredient in a cosmetic would be very great. Very many

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cosmetics bear pretentious floral names, when it is well known that their composition is mineral rather than vegetable. These facts together with others that might be mentioned create a strong presumption that this name is more fanciful than descriptive, and I agree with the Examiner that the words "Victoria Regia and Imperial" together with the drawing of the plant constitute a technical trade mark rather than a label.

His decision is therefore affirmed.

A P P L I C A T I O N
of
E D W I N H O L M E S,

Decided July 15, 1875.

Recorded Vol. 16, Page 19.

-----oOo-----

SPEAR, ACTING COMMISSIONER:

Applicant seeks to register as a trade mark, to be applied to a telegraphic apparatus on the doors and windows of buildings, the words "burglar alarm," the object of the apparatus being to indicate to the occupants of the building the entrance of burglars.

The Examiner refuses registration, on the ground that the words are purely descriptive. That the words are purely descriptive is apparent to my mind by comparison of the words with the apparatus to which they are applied. To any one reasonably well acquainted with the English language, I think the words would convey no other idea than that the apparatus was an alarm intended to give notice of the approach or entrance of burglars. That such a combination of words cannot be properly registered, as a trade mark, is sufficiently clear from the case of the Delaware and Hudson Canal Co. vs. Clark. (I Off. Gaz. p. 279.) This case ap-

pears to have been referred to by the appellant himself. It was held by the Supreme Court - that the name of the region of country could not be appropriated as a trade-mark to the exclusion of others who produce or sell a similar article coming from the same region. The reason of this appears to be that the term Lackawana was in that sense truly descriptive, and the Court says - that a name "merely descriptive of an article of trade" cannot be employed as a trade mark.

As I am satisfied that the words employed in this case are purely descriptive, I must affirm the decision of the Examiner.

Label

A P P L I C A T I O N
of
S E I D E N B E R G & C O M P A N Y,

Decided July 24, 1875.

Recorded Vol. 16, Page 37.

-----oOo-----

SPEAR, ACTING COMMISSIONER:

I have recalled this case at the request of applicants and upon an argument submitted by them, for reconsideration of a decision formerly given. I am inclined to think that the former decision was erroneous, and that the applicants are entitled to registration.

The initials of the firm, the words "la fabrica de tobaccos, the No. 19 calle de dey" may be sufficient to make the paper a proper label even if the landscape and other features would not bring it within the meaning of the term print. I am by no means sure that any addition which may be made to a proper label would deprive the applicant of the right to register the whole as a label and to whatever protection that registration would afford. But in the present instance as they have already registered the trade marks contained in this print, that question need not be



raised.

For these reasons I must reverse the decision of the Examiner and order the registration prayed for by applicants.

Alfred M. New

A P P L I C A T I O N
of
I N D I A R U B B E R C O M B C O . ,

Decided July 26, 1875.

Recorded Vol. 16, Page 38.

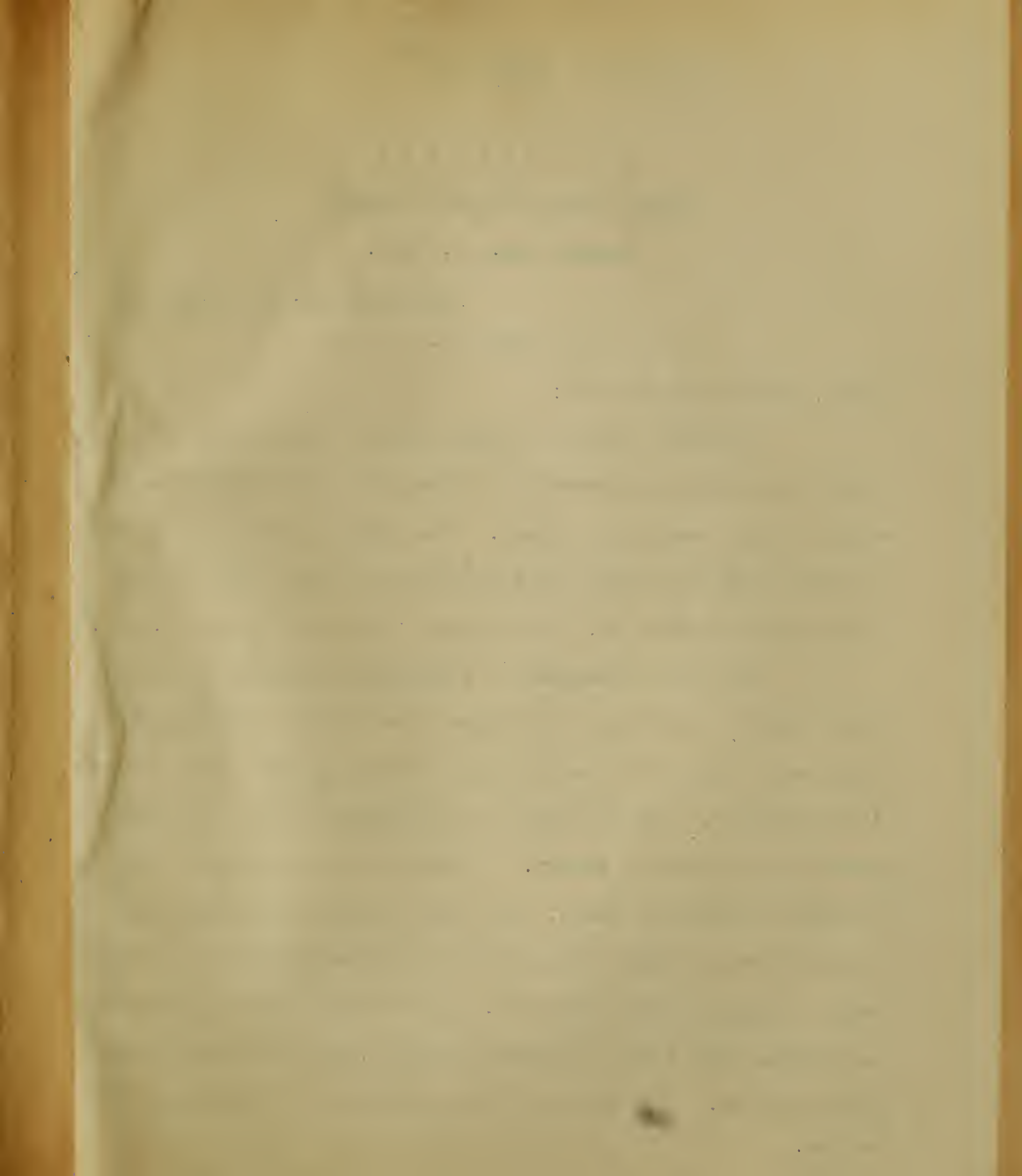
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THACHER, COMMISSIONER:

The Examiner objects to the registration in this case on the ground "that the application embraces several classes of merchandise, whereas under the law "it should be confined to a single class".

Applicant has used the mark upon various articles manufactured from the hard compound of india-rubber. In my opinion a person or company engaged in the general manufacture of hard rubber goods is entitled to register a single trade mark to be applied to such goods indiscriminately; the "class of merchandise" in such case being all goods made of hard rubber.

The decision of the Examiner is therefore overruled.



Amica Applicant

A P P L I C A T I O N
of
TUTTLE MANUFACTURING COMPANY,

Decided Aug. 11, 1875.

Recorded Vol. 16, Page 62.

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SPEAR, ACTING COMMISSIONER:

Applicant desires to register as a trade mark to be applied to articles manufactured by them, the word "Tuttle" which is a part of the name of applicant. The case is precisely the same as that which was before the Supreme Court of New York, in the case of Howe Machine Co. (Cox American Trade Mark Cases, p. 421.)

The former Examiner in refusing to register this word held - that it could not be a lawful trade mark, although admitting that "a court of equity might restrain a rival from diverting "the business of the applicant by an unlawful use of the name, on "general principles in equity." That was not the ground taken in the case referred to above. The court stated explicitly, that the plaintiff could adopt and appropriate the word "Howe" as a trade mark, as against Elias Howe, Jr. If the word "Howe" is sustained as a trade mark I see no reason, whatever, why the word "Tuttle" should not be. The decision of the Examiner is accordingly reversed.

Label

A P P L I C A T I O N
of
D. O R C U T T & S O N,

Decided Aug. 5, 1875.

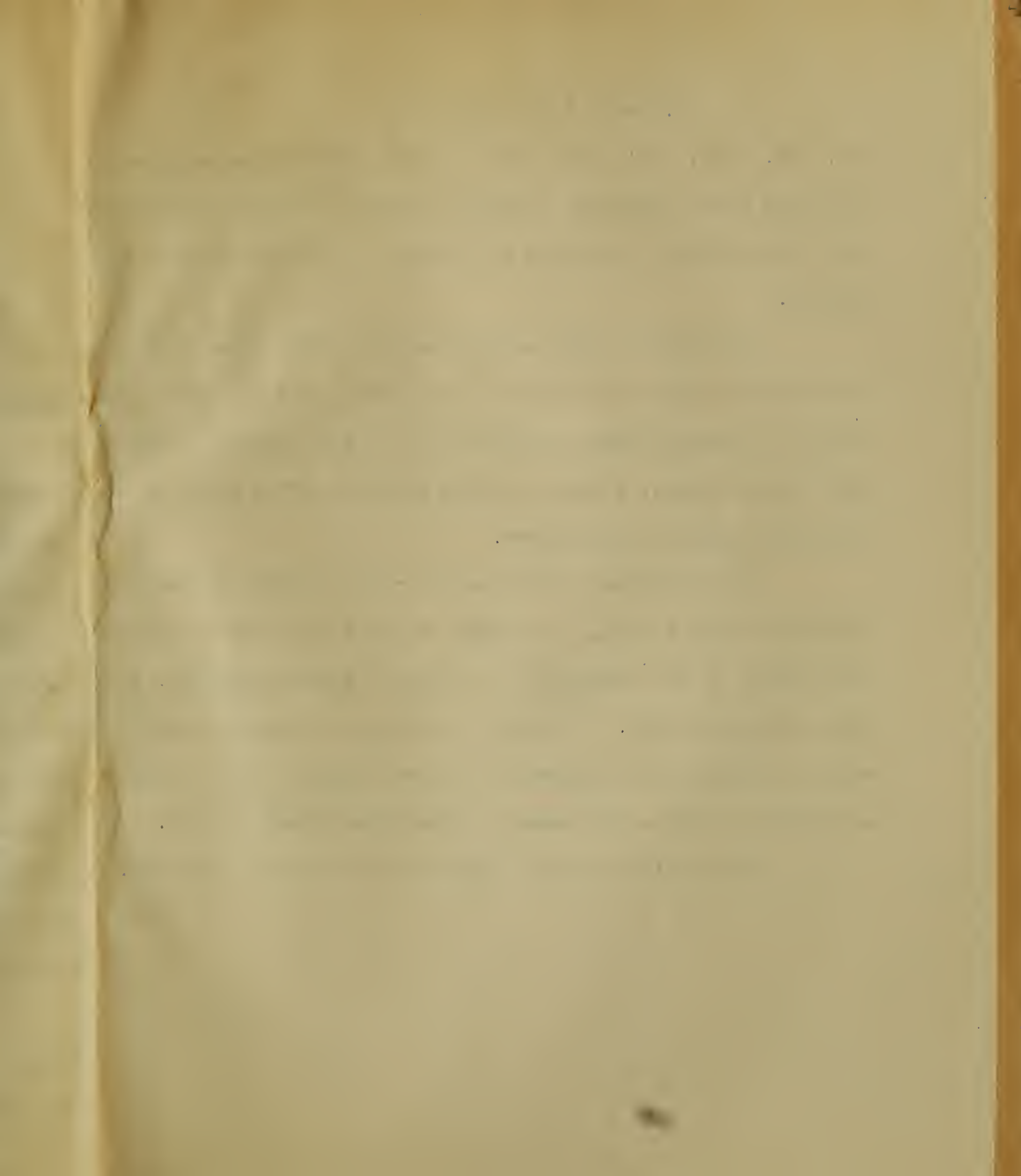
Recorded Vol. 16, Page 57.

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SPEAR, ACTING COMMISSIONER:

The subject-matter which applicant seeks to register as a label, is a printed slip having at the top a monogram composed of the initial letters of the firm, below which are the words "Orcutt's Salt-Rhuem Cure". This is followed by an enumeration of the diseases for which this cure is intended, the price of the article, fac-simile of the signature of the firm, and the place of manufacture. In all its essential, and by far the larger part of this slip, it is unquestionably a label. The Examiner refuses registration, on the ground, that the monogram and the fac-simile if taken from the label might constitute a trade mark, and therefore make the whole slip a trade mark and exclude it from registration by the terms of the law.

The Examiner, in considering this application and in refusing the registration prayed for, may have been influenced by the decision of the Acting Commissioner, in the case of Godillot,



O.G. Vol. 6, p. 641; and I refer to that decision to correct, what I believe to be unguarded language, which is capable of construction broad enough to exclude the present application from registration.

The matter under consideration in that case, was, in all its essential characteristics, a trade mark; and it was not intended to exclude from registration as labels, matters which were essentially labels, although having elements which might be selected and used as trade marks.

In the present instance the slip of paper indicates the contents of the bottle, or package to which it is to be applied, the purpose of the contents, the price, the manufacturers, and place of manufactory. The rest is merely incidental, and it would be manifestly a hardship to refuse registration, of what is so plainly a label, by reason of some added ornamentation.

The decision of the Examiner is therefore reversed.

Report

A P P L I C A T I O N
of
C L A R K & H U N T I N G T O N,

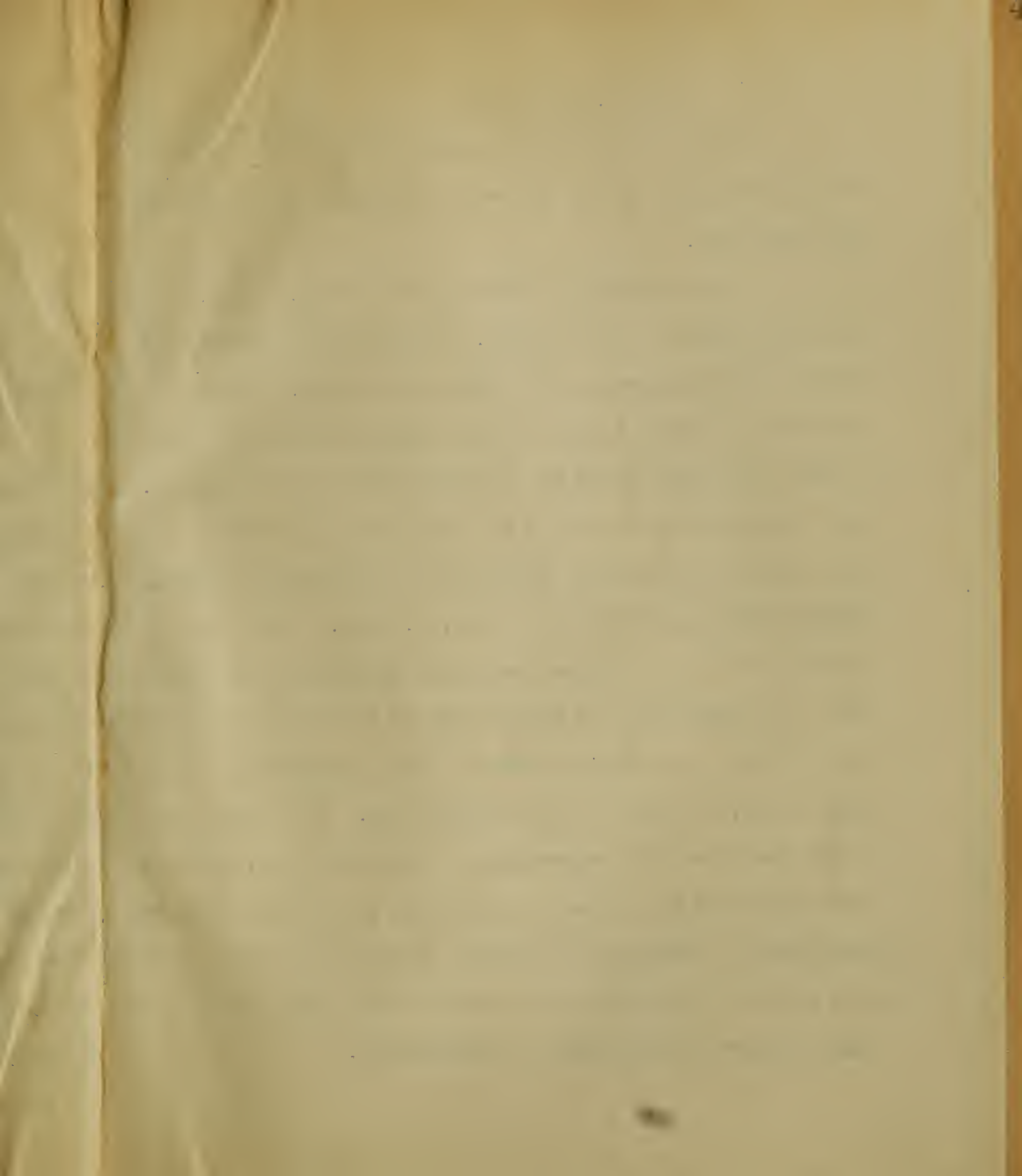
Decided Aug. 13, 1875.

Recorded Vol. 16, Page 65.

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SPEAR, ACTING COMMISSIONER:

The trade mark which applicants seek to register, consists of the words "Perfect Baking Powder". The Examiner refuses to admit it for registration on the ground that it was not "an arbitrary symbol, but merely a term of quality or commendation, or was purely descriptive". Undoubtedly a word purely descriptive, as used in any language cannot be appropriated by any one for exclusive use to designate an article sold by him, the word being used in its ordinary signification. (Wolfe vs. Goulord, American Trade Mark Cases, page 226.) Wherever a word is used in its ordinary signification as the name of a thing, or as an adjective properly and familiarly used in the language, such a word is the common property of those speaking the language, and unquestionably cannot be appropriated as the exclusive property of any party to designate the thing, or describe the thing which they had before been using commonly to designate or describe.



The difficulty which arises in this case, ^{as in that of many others} is that of determining whether or not the word is used in its purely descriptive character.

I am inclined to think, on the whole, that in this case the word perfect is not so used. Words which indicate the composition of this powder, its color, appearance, or special and recognizable qualities would be clearly descriptive; but this word "perfect" does not strike me as coming within this category. In this connection it is rather of the nature of the word "Excelsior" which was held the proper subject of a trade mark in Braham vs. Bustard (American Trade Mark Cases, p. 674). It is not a fatal objection to a word used to designate an article, as a trade mark, that it be suggestive of the quality of the thing or the excellence of it, it is simply necessary that it should not be purely descriptive, and used in the ordinary way. As I think this word is not used in this connection, in the same sense, and under the same conditions as ordinary adjectives, such as the word "white", "granulated", "chemically prepared", or any such words, I think the word should be registered as a proper trade mark, and must accordingly reverse the decision of the Examiner.

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A P P L I C A T I O N
of
THE INDIA RUBBER COMB CO.,

has a label

Decided Aug. 14, 1875.

Recorded Vol. 16, Page 66.

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THACHER, COMMISSIONER:

The Examiner has refused to register the mark described,
on the ground that it is not a lawful trade mark.

The mark sought to be registered consists of the follow-
ing words. "The India Rubber ^{Comb} Co.--Goodyear." There is a dis-
crepancy between this arrangement of words set forth in the spec-
ification, and the fac simile which is declared to be the mark
which has been used for more than twenty years past.

The fac simile is simply a label containing the follow-
ing words:-

"The India Rubber Comb Co.,
New York.
Sole Manufacturers of
Goodyear's
India Rubber and Gutta Percha Combs,
Under
Meyer's Patents, April 4, 1854, reissued Aug. 13, 1859,
extended April 4, 1868.
1 Doz. Medium S. Fine Combs, No.
Assorted Fancy Patterns.

I.R

It will be seen that the ^{word} "Goodyear" is not used here to indicate anything more than that the company are manufacturers of his, Goodyear's, India Rubber and Gutta Percha Combs," under certain patents, and the first portion of the mark is simply the firm name of the company, acknowledged to be such by applicants. Now the law distinctly declares, that the name of a corporation or firm is not a lawful trade mark. Sec. 4939 U. S. Revised Statutes, provides that "The Commissioner of Patents shall not receive and record any proposed trade mark which is not and cannot become a lawful trade mark, or which is merely the name of a person, firm or corporation unaccompanied by a mark sufficient to distinguish it from the same name when used by other persons, &c." The simple name of this firm cannot therefore be registered as a trade mark. The addition to this name of the statement, that the company are the sole manufacturers of Goodyear's combs, is not such additional distinguishing matter as the the law contemplates; it is a mere statement of a fact for the information of the public, nothing more and nothing less, and can have no effect whatever upon the status of the remaining words claimed as a trade mark.

Copies of a complaint made by this Company, against one Isaac T. Meyer, and the order of the Court hearing said complaint,

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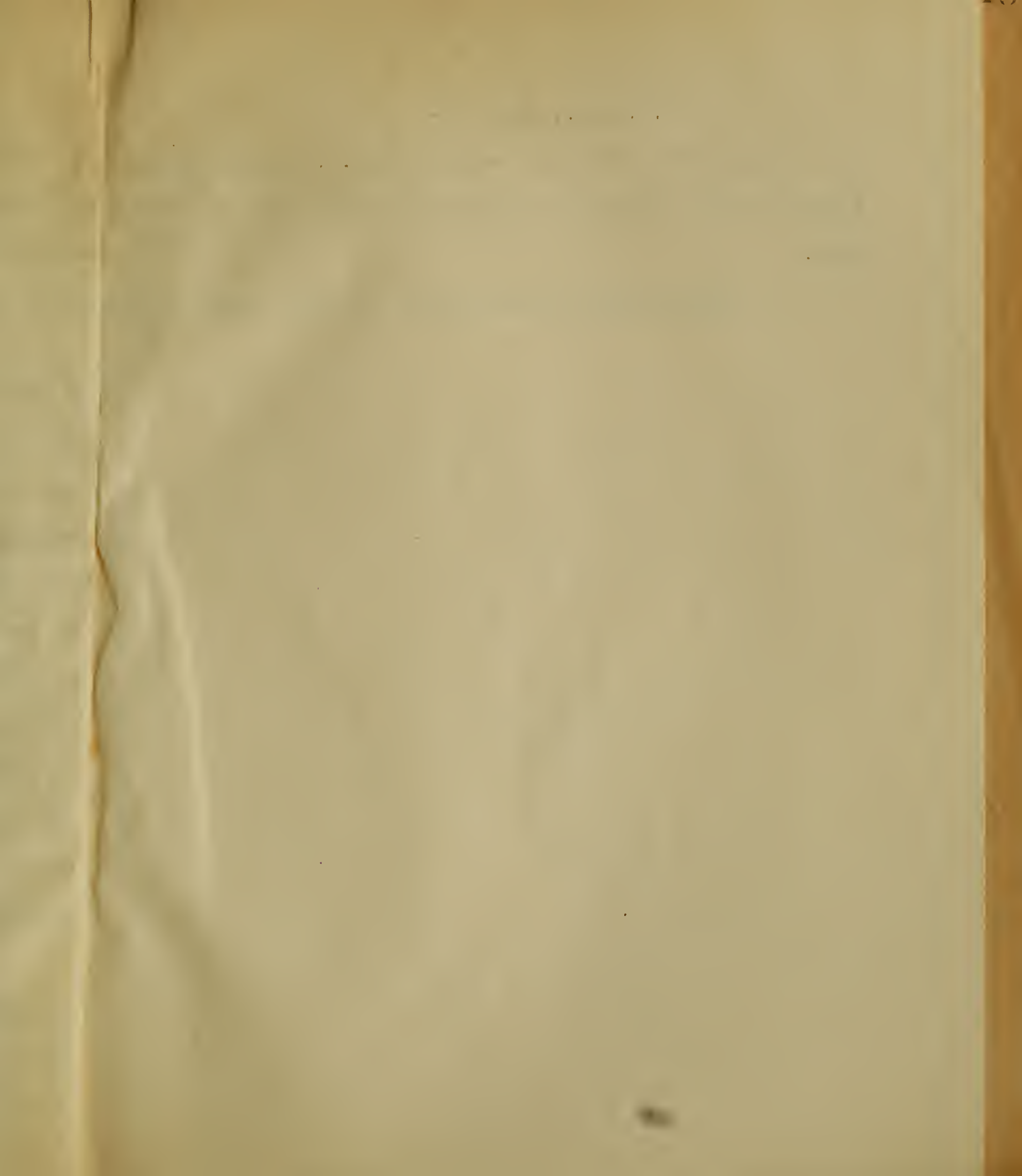
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have been filed, under the supposition that the order is a decision that the words mentioned above constitute a legal trade mark; and that therefore, under the last clause of Sec. 4939, the mark may be registered.

I am unable to place this construction upon the decision of the Court. It is simply the grant of a preliminary injunction and enjoins the defendant from using the words "The India Rubber Comb Company" without deciding whether they constitute a legal trade mark or not. There is no evidence to show that this question was brought before the Court, and there is no evidence before me that the case was ever brought to a final hearing for a disposal of all the requests made in complainant's bill. Now a corporation may have a proprietary interest in its firm name which can be enforced in Court; and the fact that in this instance the Superior Court of the City of New York, enjoined the defendants from using the firm name of complainants does by no means afford evidence that such firm name constitutes a legal trade mark.

In the absence of any evidence that the words found in the fac simile have ever been declared, by any court, a lawful trade mark, the Commissioner must be controlled by the specific language of the Statute, which certainly and unmistakably prohib-



its a registration of such a mark as this. . The fac simile is simply a label and may be registered as such, but not as a trade mark.

The decision of the Examiner of Trade Marks is affirmed.

Label

A P P L I C A T I O N
of
J O H N M. C A R T E R

Decided Aug. 31, 1875.

Recorded Vol. 16, Page 83.

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SPEAR, ACTING COMMISSIONER:

I find, on this slip, the designation of the contents of the box or package, to which it is to be applied; a statement of the diseases for which it is intended as a remedy, a commendation, and caution to purchasers. This is enough to constitute a label, and it may be so regarded.

Japanese Water

1851

1852

1853

1854

1855

1856

1857

1858

1859

1860

1861

1862

1863

1864

1865

1866

1867

1868

1869

1870

1871

1872

A P P L I C A T I O N
of
J A M E S T U R N E R,

Decided Dec. 3, 1875.

Recorded Vol. 16, Page 172.

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SPEAR, ACTING COMMISSIONER:

The statement of the case made with reasons of appeal is essentially different from that in the specification which describes the mark. It is represented in the reasons of appeal, that the mark consists of the words, "Turner's Syrup, Desert Sauce". In the application, which is the same as the fac simile submitted, the mark is "Turner's Flavoring Syrup, Desert Sauce or Beverage". Whether the article to which this mark is applied be a syrup, sauce or beverage, or be such that all these names are equally applicable to it. The mark seems to be purely descriptive in every respect.

I see nothing distinctively arbitrary in any of the words and must affirm the Examiner's decision.

A P P L I C A T I O N

of

E. K A N N & C O M P A N Y,

Decided Dec. 27, 1875.

Recorded Vol. 16, Page 254.

O. G. Vol. 9, P. 105-

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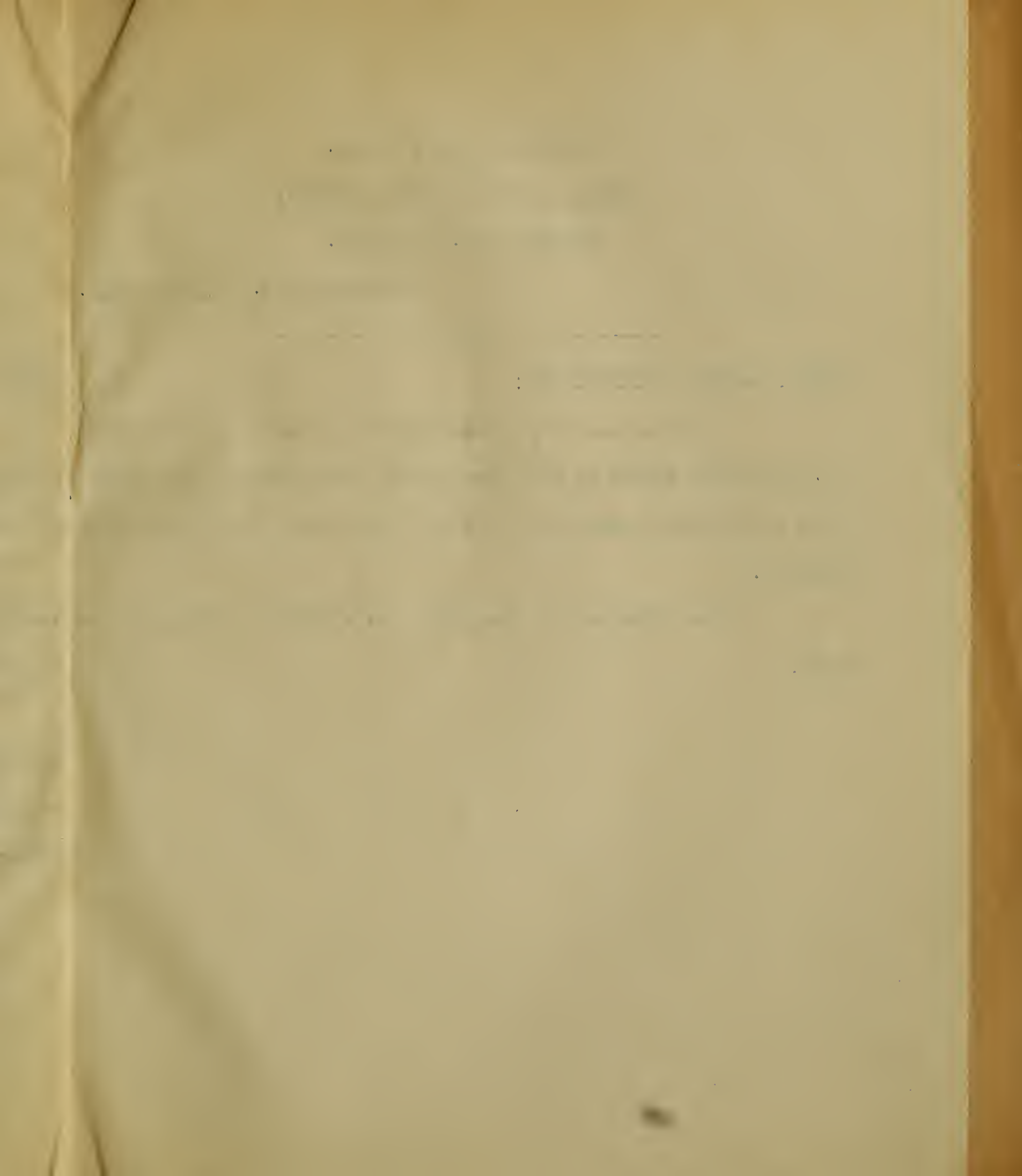
DUELL, COMMISSIONER:-

The petitioners seek to register a trade mark consisting of "Galvanized hoops placed on a barrel of dark color", to be used on barrels containing spirituous liquors manufactured by them.

Galvanized hoops for barrels have so long been used that their use on whiskey barrels can hardly be regarded at this time as an original appropriation by petitioners.

But if now first adopted for liquor barrels, it is not sufficiently distinguishable from the same mark on similar barrels to either protect the applicant in the sale of his goods, or to afford notice to the public of original ownership.

The decision of the Examiner is affirmed.



A P P L I C A T I O N.
of
INDIA RUBBER COMB COMPANY,

Decided Oct. 27, 1875.

Recorded Vol. 16, Page 142.

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SPEAR, ACTING COMMISSIONER:

I think that the selection of the initial letters of the first two words of the name of the firm renders the whole legend an arbitrary mark, and not the same thing as "India Rubber Comb Co."

The Examiner is therefore authorized to register the mark.

A P P L I C A T I O N
of
D U N D A S, D I C K & C O.,

Decided Jan. 15, 1876.

Recorded Vol. 16, Page 274.

-----ooo----- *See G. T. 9 - P. 5-38*

SPEAR, ACTING COMMISSIONER:

Applicants apply for the registration of the word "tasteless" as a trade mark, in connection with certain preparations of medicine. The word, as the Examiner holds, appears to me purely a descriptive one and to be used here in its ordinary signification. The word must be used in this case as descriptive of the thing or be simply misleading. It cannot be understood in this case as arbitrarily chosen. "An exclusive use can never be successfully claimed of words in common use previously as applicable to similar articles." Wolfe vs. Goulard (American Trade Mark Cases, 299).

If the medicines sold by applicants are tasteless then this is the proper word using it in its ordinary signification to describe them, and there is no authority that I am aware of for giving any party the exclusive use of it.

The decision of the Examiner of Trade Marks is affirmed.

Refunding Label Fees

Section 4936 of Revised Statutes, (see page 21. Pamphlet Laws of 1875) is the only section of law that applies to refunding, money paid by mistake &c "as for fees accruing at the Patent Office". And upon the construction of this law, will be determined the propriety of refunding money paid to the office, "on depositing a label for registration".

It is well known, that mistakes are made in the payment of money, upon the filing of applications for patents, as an instance Fifteen Dollars are required to be paid upon filing an application, if the inventor forwarded with his application a larger sum than is required by law to be paid, it is such a mistake as would warrant a refunding of the ~~fees~~ ^{sum}. The exact sum required by law, to accompany any application for a Patent, Trade Mark or Label, is established by the table of fees in the law and rules of the office. If less is received the office refuses to act upon the case, and it is deemed "incomplete", and the parties notified, and if in excess of the sum required, the office also notifies the party paying it, and stands ready to refund upon request, and in accordance with the law. The jurisdiction of the Patent Office is clearly defined, and the method to be pursued by applicants, before the Office, for Patents, Trade Marks and Labels clearly

pointed out, as well as the amount required to be paid as fees, accompanying each of the subjects, above referred to.

"On depositing a Trade Mark for registration \$25.00

"On depositing a Label for registration \$6.00

"On filing application for Patent &c \$15.00."

The payment of the stipulated sums referred to are conditions precedent, to the taking up for examination, such applications. Section 4939 - states that "the Commissioner of Patents shall not receive and record any proposed trade mark, which is not and cannot be-
"come a lawful trade mark" &c. It has ^{never} been contended that by such refusal to "receive and record" a trade mark, that the money paid was paid by mistake, and subject to be refunded. The law defines and limits what shall not be a lawful trade mark, and the examination of the application, is to determine if the law and rules of the office have been complied with. The registration of Labels, is strictly analogous, to that of Trade Marks. It excludes certain subjects from being registered as Labels, and defines the conditions upon which a Label "may be registered in the Patent Office". An application of this character requires an examination by the office as the legitimate custodian of the records of "entry and registration" And the applicant for such Label has no more

right to assume that a mistake has been made in the payment, by him of money, and the receipt ^{by} of the Patent Office of such money, after said office has determined, that the Label applied for to be entered and registered is refused, than has the applicant for the registration of a Trade Mark under similar circumstances. The law never intended that the labor of this office, mental and physical should be employed, in and about matters over which it has exclusive jurisdiction, without the payment of such fees as are required by law. And will not treat as mistake, of the parties paying such money, when the result to prove such mistake, is the favorable or unfavorable action of the office upon the subject matter before it.

~~Judge James.~~

The conclusion arrived at by Judge James is approved and the fee paid for registering a Label will not hereafter be refunded.

R. H. Duell, Commissioner.

Feby. 17, 1876.

A P P L I C A T I O N
of
C O G G I N, K I D D E R & C O.,

Decided Feb. 21, 1876.

Recorded Vol. 16, Page 342.

-----oOo-----

SPEAR, ACTING COMMISSIONER:

It appears from the records in this case, that the word "Haxall" is the trade mark and has been for many years, of the firm of Haxall, Crenshaw & Co. This being the case I think that the trade mark sought to be registered by these applicants would be so near that of another firm as to mislead the public. Although in this instance with the two marks, or designs side by side any one would readily perceive the difference; yet a purchaser having heard of "Haxall flour", and looking for that article in the market, might easily mistake the flour to which this mark is attached for that.

Nor do I think that the addition of the Maltese Cross would make any difference. If it means anything, if there be any object whatever in using the term "Haxall", it must be a distinction of the flour as Haxall flour; but whatever merit there may be in the article so named and known, the original proprietors of

that mark are entitled to it.

In the case of the Amoskeag Manufacturing Co. vs. Spear, (Cox American Trade Mark Cases, page 87) the defendants in that case did not use the whole ^{trade} mark of the plaintiffs, and in fact made greater change than has been made in the present case, but yet were held to have infringed upon the rights of the plaintiff.

In the case of Clark vs. Clark, id. page 206, the trade mark of the plaintiffs was omitted in part only, the names of the persons and places being changed in the mark used by the defendants, but the difference was held by the Court to be merely colorable.

In the case of the Brooklyn White Lead Co. vs. Masury, 25 Barb. page 416, it was decided that a mere change of a word could not be sufficient to constitute a new trade mark.

In my judgment the leading word in the present application would be that to which the attention of the public is called, and although not designed perhaps to do so, might mislead them and give the impression that the article sold was the same as that sold by Haxall, Crenshaw & Co.

For these reasons I must sustain the decision of the Examiner refusing the registration.

new matter

A P P L I C A T I O N
of
E L I A S B L O C K & S O N S,

Decided Feby. 21, 1876.

Endorsed on Examiner's Brief.

-----oOo-----

SPEAR, ACTING COMMISSIONER:

The admission of a new mark into the old application would amount to the transfer of the fee to another application, because the application would not be the same, but different. I am of the opinion therefore that applicant, in order to register the new trade mark, must file a new application.

THE HISTORY OF THE
CITY OF BOSTON
FROM THE FIRST SETTLEMENT
TO THE PRESENT TIME

By SAMUEL JOHNSON, LL.D.
OF THE UNIVERSITY OF OXFORD.
IN TWO VOLUMES.
THE FIRST VOLUME.
LONDON: Printed by J. JOHNSON, in Pall-mall.
MDCCLXXV.

THE HISTORY OF THE CITY OF BOSTON, FROM THE FIRST SETTLEMENT TO THE PRESENT TIME. BY SAMUEL JOHNSON, LL.D. OF THE UNIVERSITY OF OXFORD. IN TWO VOLUMES. THE FIRST VOLUME. LONDON: Printed by J. JOHNSON, in Pall-mall. MDCCLXXV.

THE HISTORY OF THE CITY OF BOSTON, FROM THE FIRST SETTLEMENT TO THE PRESENT TIME. BY SAMUEL JOHNSON, LL.D. OF THE UNIVERSITY OF OXFORD. IN TWO VOLUMES. THE FIRST VOLUME. LONDON: Printed by J. JOHNSON, in Pall-mall. MDCCLXXV.

A P P L I C A T I O N
of
W I N F I E L D P E T E R S,

Decided Feb. 26, 1876.

Recorded Vol. 16, Page 345.

-----ooo-----

SPEAR, ACTING COMMISSIONER:

I do not understand that any objection is made to the trade mark for which the applicant asks registration by reason of its similarity to any other trade mark registered, or in use prior to this application.

In the present case the objection was that the words constituting the proposed mark were purely descriptive. This is certainly true of a part. The words "ammoniated dissolved bone", undoubtedly, are descriptive, but the first part, including the definite article is arbitrary to this extent that the word "the" is prefixed to the proper name. The word "Ragsdale" alone might be a trade-mark, as applied to this particular class of goods, without the word "the" prefixed.

I am inclined to think the mark might be supported as a proper trade mark.

The decision of the Examiner of Trade Marks is overruled.

Fruit Boxes

A P P L I C A T I O N
of
J. O. S C H I M M E L & C O.,

Decided March 10, 1876.

Endorsed on Examiner's Brief.

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SPEAR, ACTING COMMISSIONER:

The words which applicants desire to register as a trade mark appear to be the natural and proper description of the article to which they are to be applied. In my judgment the Examiner is right in refusing registration.

Multiplication of fac-similes

A P P L I C A T I O N
of
W A T S O N, M c G I L L & O T H E R S,

Decided April 21, 1876.

Recorded Vol. 16, Page 407.

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DOOLITTLE, ACTING COMMISSIONER:

When this request was made, in these cases, that the Rule requiring a reduction in the size of the fac-similes of the trade-marks might be dispensed with by reason of the great cost and the impracticability, in complying with Rule 87, it was my understanding that the embellishments themselves constituted essential parts of the trade-marks; but my attention having been since called to the fact, that certain fanciful terms alone constitute the trade-mark, and that the embellishments were unessential parts thereof, I see no reason for making an exception to the rule in this case. It is true that the law requires fac-similes of the trade-mark to be filed in the Office, but this cannot reasonably be construed to mean that the fac-simile should contain the unessential portions of said trade-marks.

Applicant relies upon certain fanciful words alone as constituting his trade-mark and states in his description that the embellishments may be omitted.

The usual course, therefore, as prescribed by the 19th & 87th Office Rules will be followed.

A P P L I C A T I O N
of
D A W S O N & W A T S O N

Decided April 21, 1876.

472
Recorded Vol. 16, Page 462.

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DOOLITTLE, ACTING COMMISSIONER:

This case I think is distinguishable from the case of Rowe & Post, 9 O.G. 496. There the words "New York Cutlery Co." constituted clearly a corporate name, which any company in that city doing business had a right to use. Here a fanciful word is introduced which relieves it from the character of a merely corporate name. This is the word "Amber".

Others engaged in that line may use the remaining words "Lubricating Oil Works", but not in connection with the fanciful word mentioned.

It appears that the Examiner in cases of considerable doubt, has allowed affidavits to be submitted showing the fact that certain titles have never been actually used by corporations other than those seeking to register the same.

If the Examiner considers this one of those cases where the certificate and statement required by the statute is not suf-

ficient in satisfying his doubts on this point, I see no objections to his requiring such evidence here.

Such a doubt however, should have a foundation in fact, as the law provides ordinarily but for the certificate alluded to.

With this reservation the decision of the Examiner is reversed.

Label

A P P L I C A T I O N
of
W I L L I A M S I M P S O N & S O N S,

Decided April 27, 1876.

Recorded Vol. 1C, Page 496.

-----oOo-----

DOOLITTLE, ACTING COMMISSIONER:

The alleged label in this case consists, as applicant says, of the word "Eddystone" in connection with a figure representing a light house, the words "Wm. Simpson & Sons, Philadelphia No. . . . yds.", being added below.

The "label" is to be used on calico goods.

The common definition of the word "label", attorney for applicant asserts, "is a strip or sheet containing descriptive matter and intended for application to a bottle, box, bale, etc." I assent to this definition. Of what, then, is the word "Eddystone" descriptive when placed on calico goods? It is nothing if not a trade mark.

In view of the full consideration given to the point by the Examiner of Trade Marks further discussion is unnecessary. His decision is affirmed.

A P P L I C A T I O N
of
M I L L E R J. R O G E R S,

Decided June 16, 1876.

Recorded Vol. 17, Page 33.

-----oOo-----

DOOLITTLE, ACTING COMMISSIONER:

The decision of the Examiner of Trade Marks is affirmed.
He sets forth very fully and clearly the reasons for his action
which I fully endorse and adopt.

?

*"Regum Condempnatio One and
Hundred Lozenges"*

New matter

A P P L I C A T I O N
of
E L I A S B L O C K & S O N S,

Decided June 16, 1876.

Recorded Vol. 17, Page 32.

-----oOo-----

DUELL, COMMISSIONER:

The amendment of a proposed trade mark in a matter material to its identity changes its character and renders the sworn statement required by Section 4938 inapplicable. The effect is to create a new trade mark.

Before a trade mark can be received for examination, a fee of twenty-five dollars must be paid "in the same manner and for the same purpose as the fee required for patents." Sec. 4937. This is the price of the examination and is entirely independent of the result which may be reached. The Office does not work upon a contingent basis.

Applicant in this case sought to register as a trade mark that which the statute prohibits; the case was examined and rejected; he now asks to be permitted to supplement the original by an entirely new device and thus create a new trade mark, and wishes the Office to make an examination without the payment of a

new fee.

This cannot be done. If such a practice prevailed each trade mark rejected would be substituted by another in endless succession, and thus by the payment of one fee the applicant would monopolize the time of the Office without giving that equivalent which the law demands.

The only course now open to applicant is to file a new application in accordance with the law, and upon so doing his right to registration will be considered.

The Examiner's action is affirmed.

Interference

A P P L I C A T I O N
of
L A U T Z B R O S . , & C O . ,

Decided June 23, 1876.

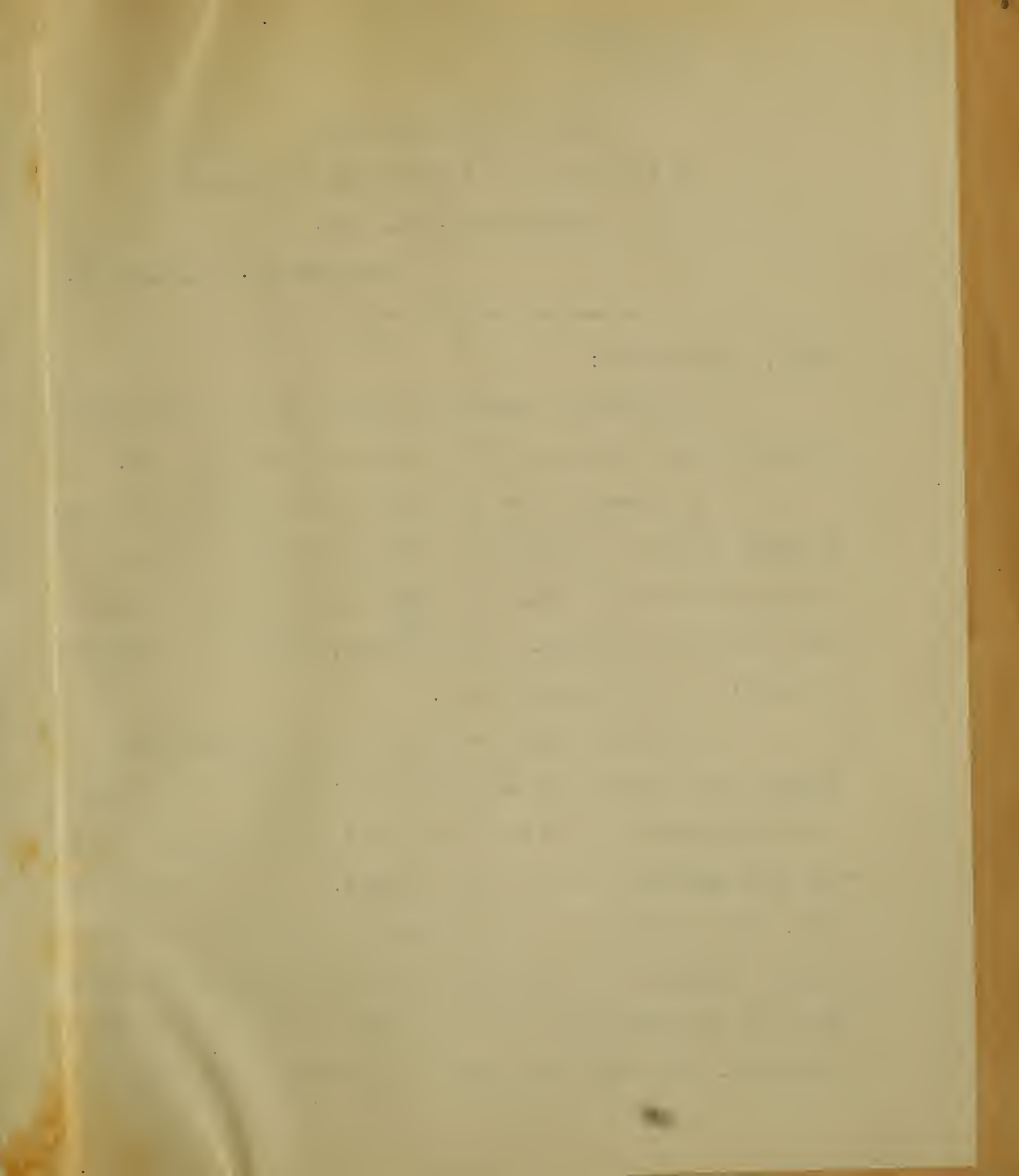
Endorsed on Examiner's Brief.

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DUELL, COMMISSIONER:

The rules of practice governing proceedings in interference cases are applicable to trade marks and should be followed.

Old Law



Ashton 1876

A P P L I C A T I O N
of
N I C H O L A S A S H T O N & S O N S,

Decided Aug. 16, 1876.

Recorded Vol. 17, Page 108.

-----ooo-----

DUELL, COMMISSIONER:

The proposed trade mark consists in the words "Ashton's Factory Filled" to be applied to packages containing salt.

It is admitted on the part of applicant that the term "factory filled" is descriptive and may be used by others; but he contends that by prefixing a ~~partie's~~ name, he thereby creates a mark descriptive of origin and ownership, such as is recognized by the courts as a valid trade mark.

By Section 4939, the Commissioner is prohibited from receiving for registration "the name of a person, firm or corporation unaccompanied by a mark sufficient to distinguish it from "the same name when used by other persons." It is claimed, therefore, that by adding the words "Factory Filled" to the name of the person "Ashton", the requirements of the statute are fulfilled. This I do not comprehend to be the true meaning of the section referred to. The mark which may be used should be such as of its-

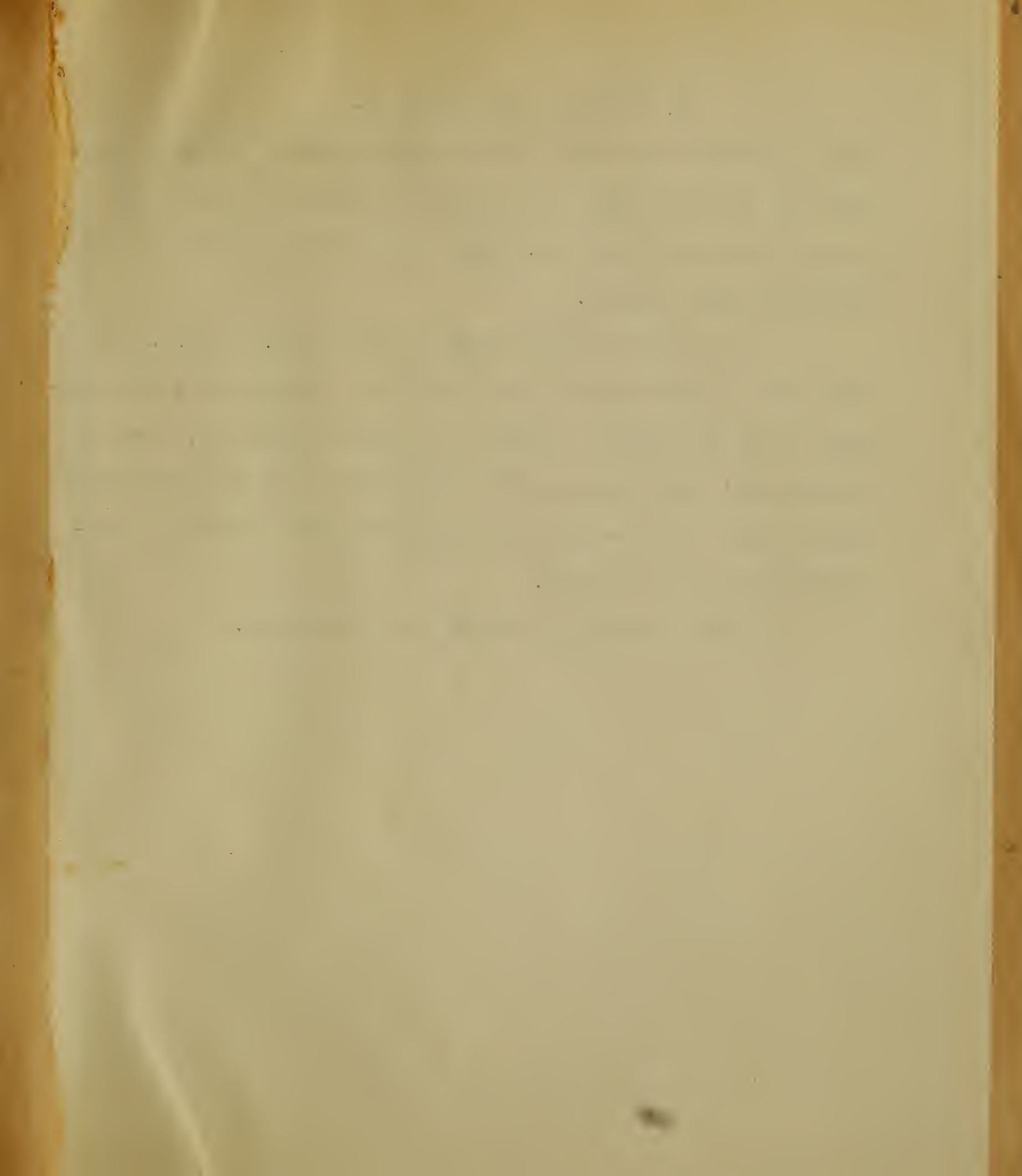


elf would constitute a legal trade mark.

This is the only way in which the name could, in contemplation of law, be distinguished from that of any other person. A man is at liberty to use his own name in connection with any matter descriptive of the kind, quality, use, or manufacture to which it may be applied. If the name and the descriptive matter are neither of them legal trade marks they do not become so by being used together.

The same objection would apply to the use of descriptive terms in connection with a person's name as there would be to the name or words alone; it operates to deprive others of the same name from the full and free enjoyment thereof, which unless it is fraudulently conducted, no one can limit or restrict, as the use of words in their ordinary signification is the right of the public

In his argument applicant has made reference to the case of "The India Rubber Comb Co." 8 O.G. 905, as a precedent for admitting his case to registration. By reference to this case it will be found that the name of the corporation was considered as an exception to the general rule that such matter could not be registered as a trade mark, and was admitted under the last clause of section 4932, which says, "but this section shall not prevent



"the registry of any lawful trade mark rightfully in use on the
"8th day of July, 1870", and it was then established that the
words "India Rubber Comb Co." were a lawful trade mark within the
meaning of this section.

In the case of the "Rubber Clothing Co." 10 O.G. 111, is
set forth the character of proof required in cases where an appli-
cant claims the right to register the name of a person, firm, or
corporation; and if applicant in the present case can show that he
comes within the rule there laid down his trade mark may be reg-
istered, but not otherwise.

The decision of the Examiner is affirmed.



A P P L I C A T I O N
of
G A T E S & S E V E R A N C E,

Decided Aug. 26, 1876.

Recorded Vol. 17, Page 115.

-----oOo-----

DOOLITTLE, ACTING.COMMISSIONER:

Applicant desires to register as a trade mark, the word
"Shake" blown into glass bottles.

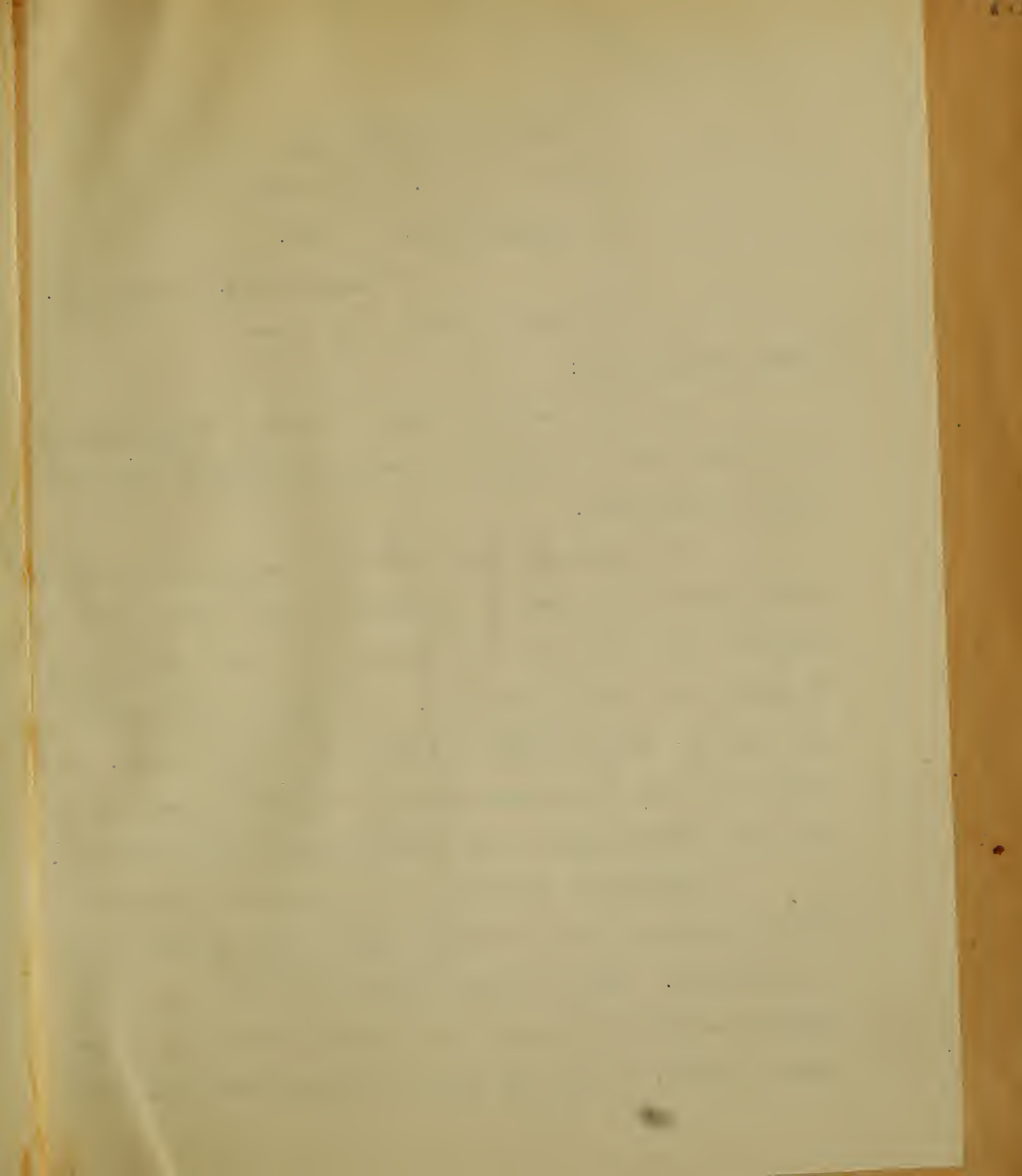
He substantially admits that the word itself is not of
that arbitrary or fanciful character necessary to constitute a le-
gal trade mark; the word "shake" any one is entitled to use in any
bottle the contents of which are to be shaken - but he thinks there
is exceptional virtue in the fact of having the word blown into
the bottle as it is made, and thus make it permanent, and the two
inseparable.

If there were any peculiar merit in this then the same
process would be sufficient to make a trade mark of the name of
any place, person or firm, or corporation, or other words not rec-
ognized by law as valid trade marks. The absurdity of the thing
is apparent.

The decision of the Examiner is affirmed.

THE
HISTORY OF THE
CITY OF BOSTON

From its first settlement in 1630 to the present time
its growth and development
its political and social progress
its commercial and industrial expansion
its cultural and educational achievements
its architectural and artistic landmarks
its historical and legendary events
its famous and notable figures
its institutions and organizations
its sports and recreation
its government and public services
its transportation and communication
its health and welfare
its environment and natural resources
its future prospects and challenges



Descriptive words

A P P L I C A T I O N
of
G E O R G E E. G L I N E S,

Decided Sept. 21, 1878.

Recorded Vol. 17, Page 148.

-----oOo-----

DUELL, COMMISSIONER:

Applicant seeks to register the words "Rubber Roofing" as a trade mark to be applied to roofing material of which rubber forms a constituent.

It is admitted that words purely descriptive of the article cannot be received for registration under the law, but it is denied on the part of the applicant that the words sought to be protected are purely descriptive. I am clearly of the opinion that they are objectionable on account of descriptiveness. They either describe the compound employed or else are deceptive, as the words employed have a definite and clearly defined meaning.

Upon making examination I find that there are upwards of thirty patents granted for roofing compositions of which rubber is an ingredient. Some of these contain this material in such large proportions that they could, with perfect propriety, be termed rubber roofing, so that the allegation which counsel was under-

stood to make at the hearing that applicant's case should be regarded with special favor on account of his being the owner of the patent under which the roofing is made is of little force, as the rights of these other patentees would be prejudiced if they were inhibited from designating their inventions by a title which is particularly appropriate.

The decision of the Examiner is affirmed.

late

A P P L I C A T I O N
of
J A M E S M c C O R M I C K,

Decided Oct. 5, 1876.

Endorsed on Examiner's Brief.

-----oOo-----

DOOLITTLE, ACTING COMMISSIONER:

The decision of the Examiner in this case is affirmed.

It seems apparent that the words "Great American" as here employed are not descriptive in the sense referred to by counsel, but that they form a valid trade mark.

Such being the case, it comes clearly within the doctrine announced in W. Simpson & Sons, and unless these words are eliminated, registration must be refused.

A P P L I C A T I O N
of
_ D O L E B R O T H E R S _

Decided Oct. 28, 1876.

Recorded Vol. 17, Page 187.

-----oOo-----

DOOLITTLE, ACTING COMMISSIONER:

The proposed trade mark in this case consists of the words "Egg Macaroni" as applied to packages containing macaroni. The Examiner's objection is, that the term is either descriptive or deceptive in its nature, and therefore does not constitute a lawful trade mark. His action is based upon the assumption that eggs are used in the manufacture of macaroni, and therefore the term "egg macaroni" is the proper designation of the article and consequently belongs to the public. If, therefore, the article to which applicants apply this term as a trade mark does contain eggs as an ingredient then it is certainly descriptive. On the other hand, if he applies the term to the ordinary article known as macaroni the words are deceptive, for they represent a specific article of the same class, and of which they are the proper designation.

In proof of the fact that macaroni is made with eggs

reference may be had to a publication entitled "Magazine of Domestic Economy", Vol. 4, pages 35 and 36, published by W. S. Orr, & Co. London 1839. Under these circumstances it is evident that applicants can possess no property in the trade mark now sought to be registered.

The decision of the Examiner refusing to register the same is affirmed.



Just
10.09 860
A P P L I C A T I O N
of
P R A T T & F A R M E R,

Decided Nov. 27, 1876.

Recorded Vol. 17, Page 222.

-----oOo-----

DOOLITTLE, ACTING.COMMISSIONER:

The U.S.Supreme Court in the case of the Canal Co. vs. Clark (15 Wall,311) held - that a person "has no right to appropriate a sign or symbol, which from the nature of the fact it is used to signify, others may employ with equal truth, and therefore "have an equal right to employ for.the same purpose." Numerous cases are there cited also sustaining this doctrine.

Now the figure of a fish when applied to lines having the form and substance of a line used for the purpose of fishing, and well known in trade as intended for that purpose, has no more arbitrary or fanciful signification than the figure of a boot in front of a shoe shop,or upon the article itself. In short any maker of fish lines has a perfect right to use this symbol instead of the word "fish". The authorities are so numerous and so clear upon this point that a further discussion of it is unnecessary.

The decision of the Examiner of Trade-Marks is affirmed.



A P P L I C A T I O N
of
R O S S T U R N E R & C O.,

Decided Jan. 12, 1877.

Recorded Vol. 18, Page 253.

-----oOo-----

DOOLITTLE, ACTING COMMISSIONER:

The proposed trade-mark consists of the words "Green Label Thread" printed upon green labels of any desired form.

The Examiner's objection is that the terms are not sufficiently arbitrary, as the public are at liberty to use green labels and that such use would probably constitute an infringement of the words themselves descriptive of such labels.

If green labels have heretofore been employed upon packages of thread in the manner claimed by applicant, then they are undoubtedly not entitled to have their trade-mark registered, but, if, as appears to be the case, they are the first to use either the green labels or the words descriptive thereof upon such article it seems to me that they are justly entitled to protection therefor, there being, as I see, no encroachment upon any public right or property.

The Examiner's decision is accordingly overruled.

A P P L I C A T I O N
of
THE D. R. BARTON TOOL COMPANY,

Decided Feb. 3, 1877.

Endorsed on Examiner's Brief.

-----oOo-----

DOOLITTLE, ACTING COMMISSIONER:

The conclusions arrived at by the Examiner are regarded as warranted by the facts in the case.

There is nothing sufficiently arbitrary in the matter sought to be registered to permit of its being classed as a trade mark.

The decision of the Examiner is affirmed.

1877
D R Barton & Co
Reckitt 114

A P P L I C A T I O N
of
D A V I D A. L I N D S A Y,

Decided Feb. 5, 1877.

Recorded Vol. 17, Page 277.

-----oOo-----

DOOLITTLE, ACTING COMMISSIONER:

The trade-mark sought to be registered consists of the words "One Length Brand". The objection made by the Examiner is, in his opinion, descriptive. This objection seems to be of doubtful application to the case under consideration.

While it is true that the term employed may be descriptive, it is not so certain that it is, or that it conveys any information regarding the article to which it applies. I feel exceedingly doubtful upon this score and prefer to give the applicant the benefit thereof.

The decision of the Examiner is overruled.

Jan 27 1877

A P P L I C A T I O N
of
J O H N D. P A R K,

Decided Feb. 13, 1877.

Recorded Vol. 17, Page 282.

-----oOo-----

SPEAR, COMMISSIONER:

The trade-mark which applicant seeks to register, consists of the words "English Crown Gin" above a circle in which is the monogram of the applicant. Registration is refused by the Examiner on account of its similarity of certain trade-marks before registered by Squire & Co. Those two trade marks consist of the words "Golden Crown Gin" and "Iron Crown Gin". From these it appears that the words "Crown Gin" are not claimed or owned exclusively by any person. If "Golden Crown Gin" and "Iron Crown Gin" stand on the same basis and may be registered, I do not see why a third trade-mark of the same class as "English Crown Gin" may not be also registered. Besides the other marks are such as to help make out a sufficient distinction.

I think the Examiner may properly register the mark, and accordingly so direct.

THE HISTORY OF THE

PROGRESS OF THE

ART OF PRINTING

IN GREAT BRITAIN

FROM

THE FIRST

PRINTING IN THE

REIGN OF

EDWARD THE FIRST

TO THE PRESENT

STATE OF THE

ART

BY

JOHN WELSH

OF THE CITY OF LONDON

PRINTED BY

JOHN WELSH

AT THE SIGN OF THE

WINDMILL

IN THE

STREET

NEAR

A P P L I C A T I O N
of
T I L L M A N & B E N D E L,

Decided Feb. 26, 1877.

Recorded Vol. 17, Page 307.

-----oOo-----

SPEAR, COMMISSIONER:

The mark for which registration is asked consists of a star of golden color and the words "Golden Star", and it is applied to ^{canned} common oysters.

Registration is refused by the Examiner for the reason, as he alleges, that the applicants do not appear to be entitled to the use of this mark. It is shown, as he represents, in the registered trade marks of the Portland Packing Co., referred to specifically in his letter. The marks in those cases consist of a star and the word "Star" without limitation as to color, and these marks are applied to canned provisions.

The mark for which registration is now asked does not appear to me to differ from that already registered sufficiently to be distinguished by the public from the mark referred to by the Examiner, and as the marks are applied to the same class of goods, registration must be refused.

Form of article of trade (a shot metal cannon)

A P P L I C A T I O N
of
T H E O D O R E W. B U R G E R,

Decided March 2, 1877.

Not Recorded.

-----oOo-----

DOOLITTLE, ACTING COMMISSIONER:

"Peculiar configuration given to a particular article of trade", is, if new and original, expressly made by law the subject of a design patent, and there is no provision of law whatever which even intimates that such matter can be registered as a trade mark.

The Examiner has given this subject very full and careful consideration, and his objections are fully concurred in.

A P P L I C A T I O N
of
R O B I N S O N, L O R D & C O.,

Decided March 2, 1877.

Recorded Vol. 17, Page 310.

-----oOo-----

DOOLITTLE, ACTING COMMISSIONER:

Applicants seek to register the words "No Brand" as a trade-mark. The Examiner objects on the ground that these words do not amount to an arbitrary symbol, but are a mere announcement.

I think the words have a very different function than a mere announcement. If that were the object of their use silence would have been better than speech.

The matches are the "No Brand" brand, and they can be used to designate the origin or ownership just as well as the words "No Such" which might be applied to Tobacco or the word "Unknown" applied to Whiskey.

The words "No Brand" are the brand, and that there is all there is of it, and being registered and used as a trade-mark, the words would be as fanciful as any that could be used, indicating anything but what they are usually intended to mean. I fail to see the pertinency of the Lindsay case.

The decision of the Examiner is reversed.

A P P L I C A T I O N
of
WHEELER, MADDEN & CLEMSON MANUFACTURING CO.,

Decided March 22, 1877.

Recorded Vol. 17, Page 354.

-----oOo-----

DOOLITTLE, ACTING COMMISSIONER:

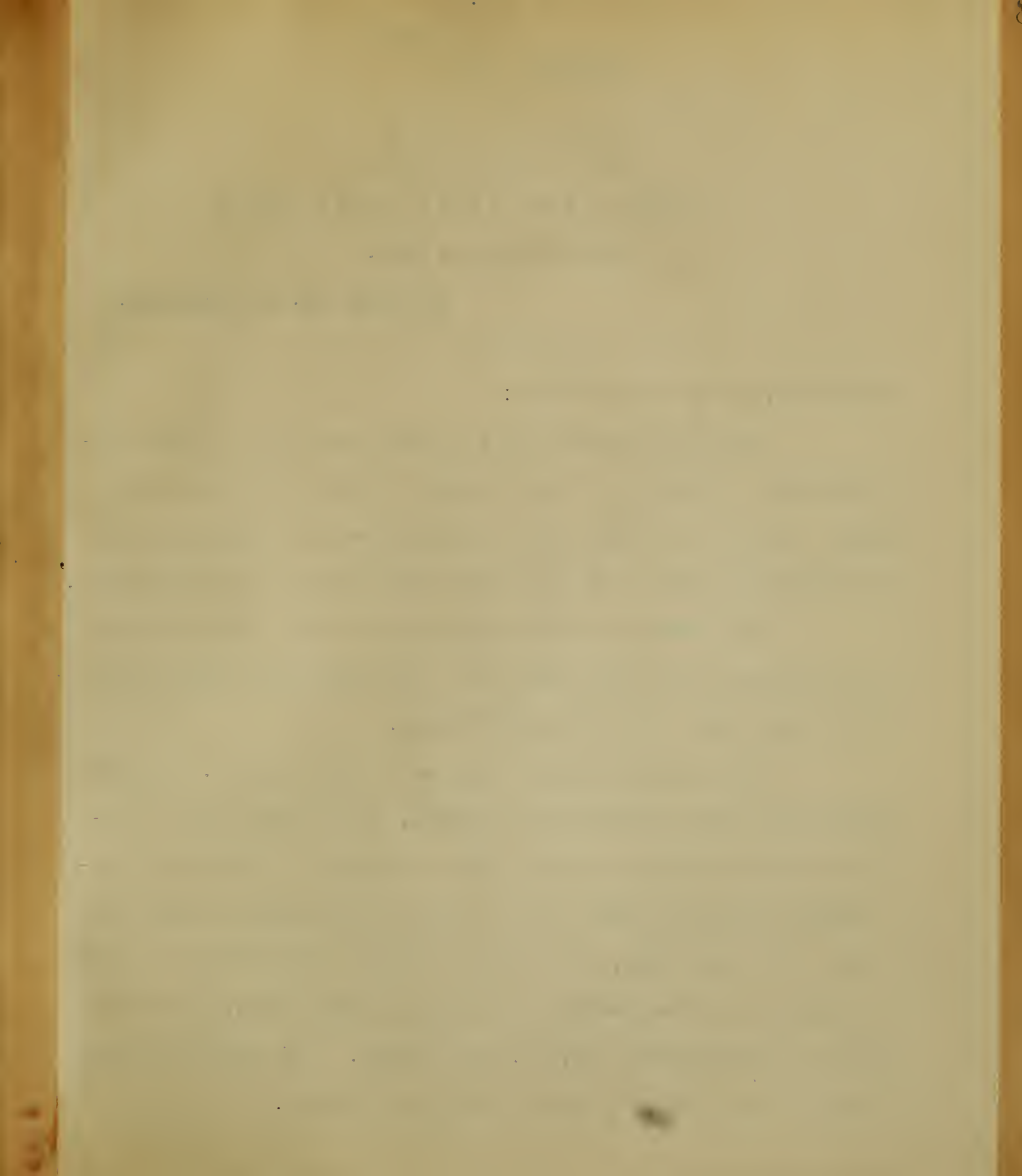
Applicant desires to register the term "Thin back" as a trade mark on saws. It is generally understood that a thin back is an absolute characteristic of saws; but it is also a relative quality in connection with the cutting edge.

In the manufacture of rectilinear saws after the teeth are punched along the edge of the blade, the blade is hardened, tempered and hammered, and is then ground to reduce the thickness of the metal from the teeth towards the back. Circular saws, for the most part, are of uniform thickness. Appleton's Dict.

Whether, therefore, the term "thin back" is known or unknown to the trade as a technical term, it is simply a descriptive expression which any one has the right to use in describing a saw.

The trade marks that the law permits to be registered are those arbitrary in nature and fanciful in signification, and certainly applicant might have been more fortunate in his selection if that was all which he desired.

The decision of the Examiner is affirmed.



Label or Print

A P P L I C A T I O N
of
H E P P E N H E I M E R & M A U R E R

Decided April 7, 1877.

Recorded Vol. 17, Page 371.

-----oOo-----

DOOLITTLE, ACTING COMMISSIONER:

These applicants desire to register a cut or print, illustrating a "scene on a race course", without any descriptive matter thereon, and which they print and sell to customers, who may apply the same to articles which they may sell or manufacture.

The Examiner of Trade Marks has refused the application on the ground, that this symbol is a trade mark and registrable, if at all, under the trade mark statute.

Applicants describe this matter as a "label". Fanciful symbols or words, arbitrarily selected, to be placed upon a certain class of goods to denote their ownership or origin, and distinguish the goods from those of the same kind made by other persons, are trade marks, and words of ordinary signification giving the name of the manufacturer or place of manufacture, quality of goods, directions for use, &c., are labels. The matter in hand does not fall within either of these definitions.

This print is neither a trade mark nor a label, nor at the same time such a work of art as to entitle it to protection under the copyright law.

Section 3, of the copyright act of June 18, 1874, provides: "That in the construction of this act the words "engraving," "cut", and "print" shall be applied only to pictorial illustrations of works connected with the fine arts, and no prints or labels designed to be used for any other articles of manufacture shall be entered under the copyright law, but may be registered in the Patent Office. And the Commissioner of Patents is hereby charged with the supervision and control of the entry or registry of such prints or labels, in conformity with the regulations provided by law as to copyright of prints, except that there shall be paid for recording the title of any print, or label, not a trade mark, six dollars, which shall cover the expense of furnishing a copy of the record, under the seal of the Commissioner of Patents, to the party entering the same."

Under the section cited, a print, to constitute the subject of a copyright must consist of a pictorial illustration of a work connected with the fine arts. Pictorial illustrations or prints to be used on articles of manufacture not connected with

the fine arts, are to be registered at the Patent Office.

The print forming the subject of this application, has no connection with any work of art, but the design of its authors is to dispose of it to dealers and others who may wish to attach it to various articles of manufacture. When the latter named class of persons come forward to register the same as a trade mark, it will then be proper to consider it in that light.

It is to be noted also, that this law does not, as in trade-marks, require the registrant of a print to state a particular description of goods to which he intends applying the same, nor in fact that he intends to apply it, himself, to any description of goods.

The Examiner relies upon the decision in the case of W. Simpson & Sons, 9 O.G. 333, to sustain his action. In that case an attempt was made to register as a part of a label, a fanciful figure to be used upon a certain class of merchandise therein described, and the purport of that decision simply was that a label and a trade-mark under the law, were not interchangeable matters, and that the distinction between the same, as above given, must be observed in Office practice.

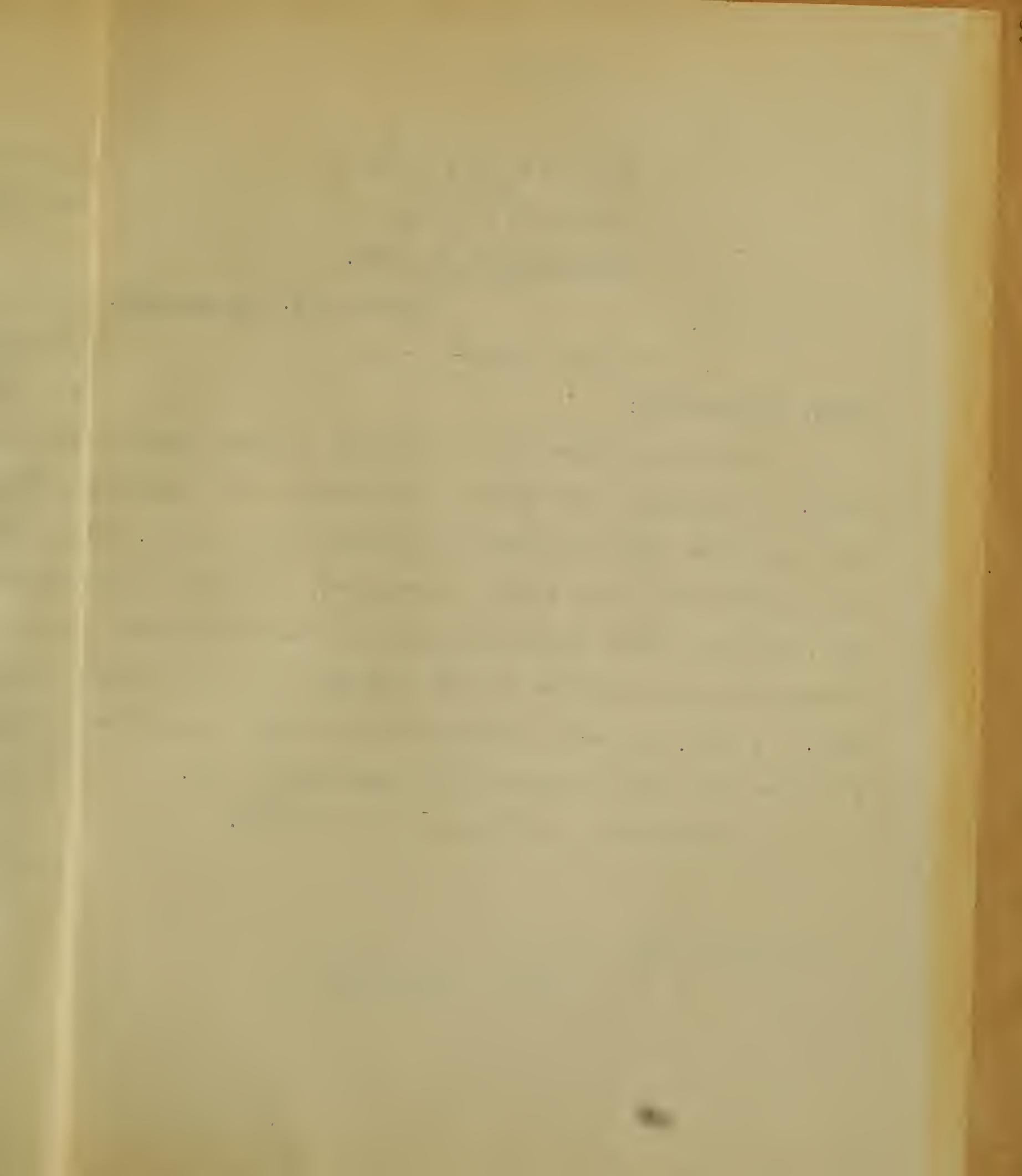
The Examiner states that a very similar illustration or

print has been recently copyrighted at the Library of Congress, but I do not see of what force that fact has upon this application

The distinctiveness between trade marks, labels and prints must be observed; but regarding this matter as a print to be attached to no particular description of goods, but only capable of being so attached, and the object of its owners being simply to protect themselves in the making of the same I think the doctrine in the Schumacher & Ettlinger case 9 O.G. 594, is the correct one, and should be applied here, and that is, that the protection which applicants of this character seek and which a certificate of registration will give them, is no more than protection in the exclusive right to make and sell this particular print, for the reason that it is not connected with the fine arts, nor applied to any description of merchandise.

Upon amending their application in the matter of description as herein suggested the print will be registered.

The decision of the Examiner is accordingly reversed.



Label

A P P L I C A T I O N
of
G E O . W . K I N G ,

Decided April 27, 1877.

Recorded Vol. 17, Page 387.

-----oOo-----

SPEAR, COMMISSIONER:

The print sought to be registered is without doubt a label. It contains the imprint of the article, the directions for use, price, person by whom it is prepared and place &c. There are only two words which could, in any sense, be used as a trade-mark, and they appear to be used rather as descriptive words, subordinate in place and type, and not intended at all as a trade mark. I think the case is such as that of Orcutt and Son reported on page 102 of Commissioner's Decisions of 1875.

The decision of the Examiner is reversed.

Label not registered
Wm. Spear



A P P L I C A T I O N
of
L A M B E R T & S A R G E N T

Decided May 2, 1877.

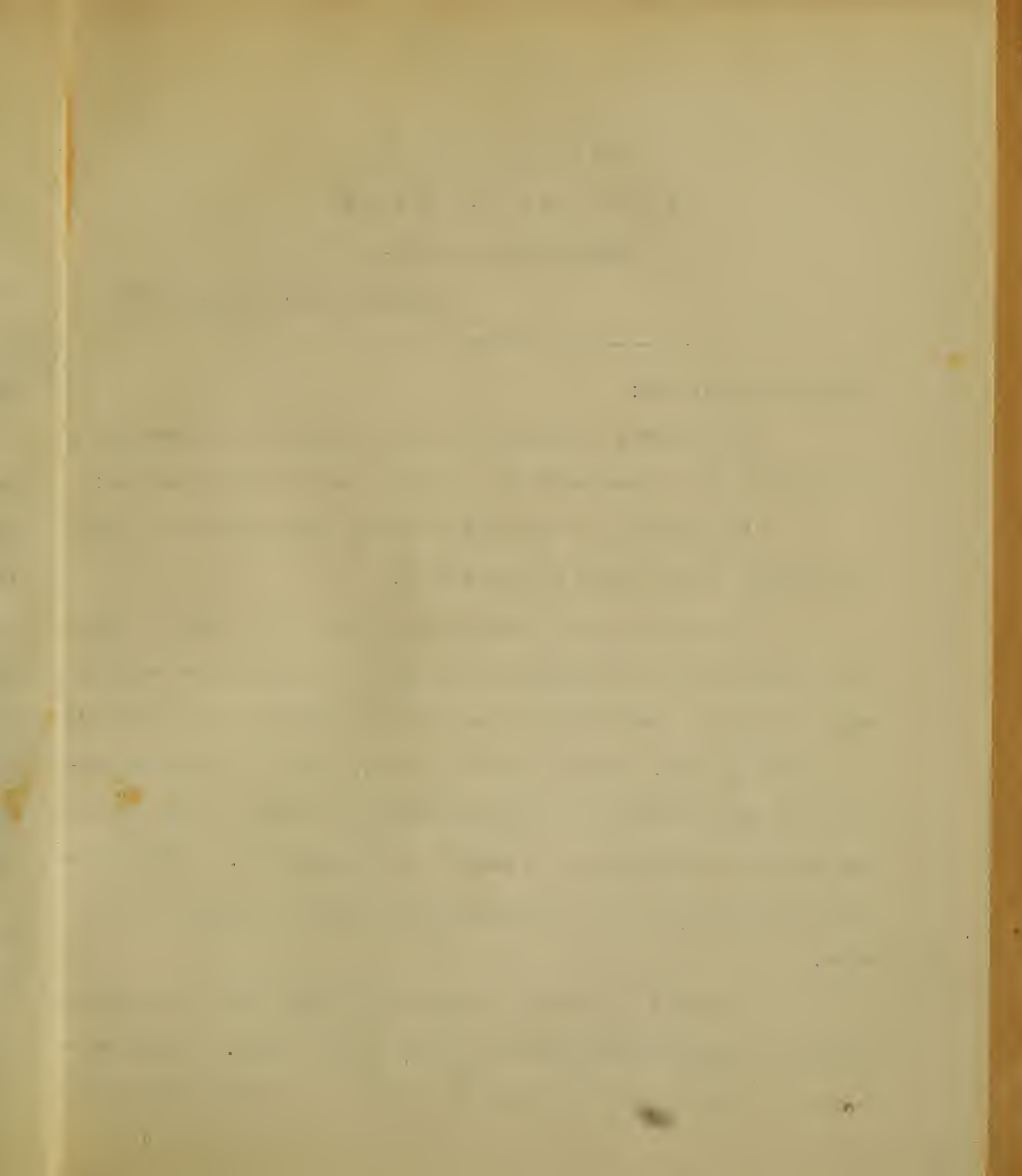
Endorsed on Examiner's Brief.

-----oOo-----

DOOLITTLE, ACTING COMMISSIONER:

Words objectionable as trade marks as denoting the quality or characteristics of the things to which they are attached must be, grammatically speaking, adjectives, and are generally used in connection with the name of the thing they describe. Now the word "utility" is a noun. It is a name, and not the name of the article to which it is attached. Standing alone it describes nothing, and to call a table the "utility" table would be ungrammatical and meaningless, unless the speaker had in mind what applicant now has, a fanciful name by which a certain class of tables were known.

If the adjective useful, or good, etc. had been appropriated, the objection of the Examiner would have been well taken; as it is, I think his decision should be reversed.



Red Oil

A P P L I C A T I O N
of
W I L L I A M L. T E T E R,

Decided May 3, 1877.

Recorded Vol. 17, Page 420.

-----oOo-----

SPEAR, COMMISSIONER:

This appeal is taken from the refusal of the Examiner of to register as a trade mark that which is described as follows:-

"My trade mark consists of a red color applied to lamp
"oil (known to the trade as kerosene)".

He states in his specification that this color is impart ed to the oil for the purpose of giving it a distinctive mark by which it can be recognized as the article prepared and sold by him It is represented, and appears to be true, that the coloring mat- ter does not affect and is not calculated to affect the oil in any way whatever, excepting as a mark to distinguish it. The quali- ties of it as oil for illuminating purposes are precisely the same.

The mark is unquestionably a departure from the ordinary method of distinguishing goods of this or any class. It is cus- tomary to impress upon the article or affix to it the mark by which

which the marker or seller desires it to be known, or, in the case of fluids, these marks are impressed upon or affixed to the vessels which contain them. In this case applicant imparts the characteristic mark to the fluid itself.

The Examiner's objection is that "the matter claimed as "the trade mark enters into the article which is sold, and thus becomes a component part thereof."

This is, in a certain sense, true, and if this coloring matter, which is thus made to become a component part of the oil, were an ingredient of the oil, then the objection would be well founded.

In the case of the Delaware and Hudson Canal Co. vs. Clark, Vol. 1, O.G., page 279, it was said:

"Nor can a generic name or a name merely descriptive of "an article of trade, of its qualities, ingredients, or characteristics, be employed as a trade mark, and the exclusive use of it "be entitled to legal protection."

Now if, in this case, it were a characteristic or quality of the oil, or a color natural to the oil, and necessarily, or even incidentally, imparted to it in its manufacture, then the objection would hold good, but the coloring matter does not form any

essential part of the oil as an illuminating fluid, and, as was said above, does not affect it in that respect in any manner whatever.

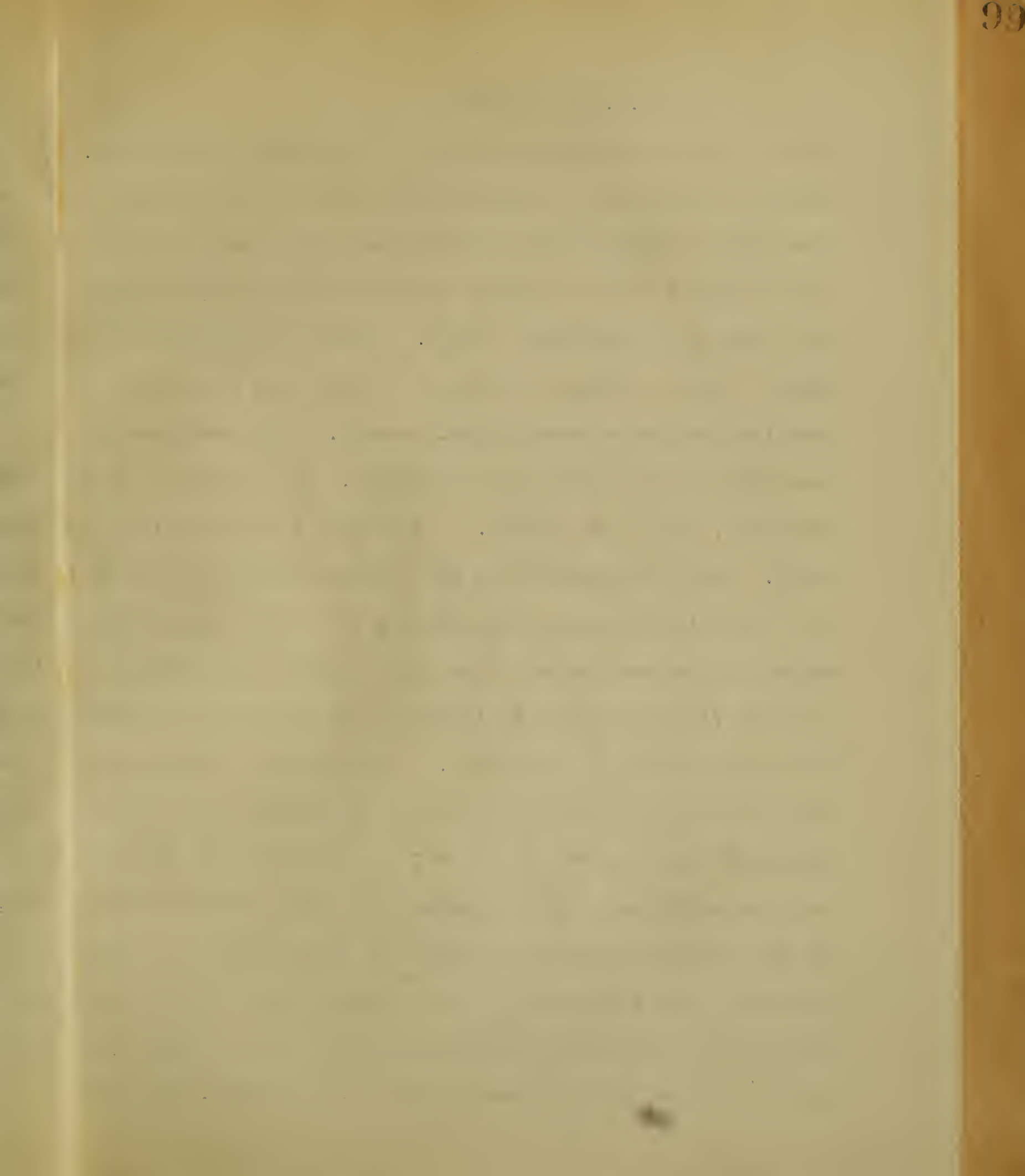
Nothing is more difficult than to define in any general terms what may be a lawful trade-mark. The ingenuity of man may vary such marks infinitely, nor need there be any effort or care, so far as I can see, to compel registrants for application of trade marks to pursue any beaten path, or come within any exact definition. The only thing to be guarded is that the natural rights of the public be not infringed. This is all that the law attempts. It is provided that a mere name shall not be registered as a trade mark, manifestly for the reason that it may be the name of another person, and this is the only principle which the law has set up. Plainly coming within this law, and the same principle, is all that class of marks which indicate the characteristics of an article, and all descriptive words used in the ordinary signification of the language. The objection to their use as exclusive marks is that such use is a common right not to be appropriated by any one person for exclusive ownership. This is a distinction which the courts have generally made.

In Stokes vs. Landgraff, 17 Barb. S.C., 609, it was said:

"In all cases where names, signs, marks, brands, labels, words or devices of any kind can be advantageously used to designate the goods or property, or particular place of business, of a person engaged in trade or manufactures, or any similar business, he may adopt and use such as he pleases, which are adapted to that end, and have not been before appropriated."

The decisions in trade mark cases furnish abundant illustrations of this principle. All that is required is that the mark shall, either by original signification or by association, point to the origin or ownership of the article which it indicates and that it shall not give monopoly in the sale of any goods ^{other} than those produced or sold by the person claiming the mark. It is this which excludes generic names, names of qualities, names of persons, or any such descriptive words as are used in their ordinary or legitimate signification. But, on the other hand, avoiding this barrier, there is no limitation whatever. "Any contrivance, design, device, name, symbol, or other thing may be employed as a trade mark." Filly vs. Fassett, American Trade Mark Cases, page 531. And the only limitation added to this broad category is that which I have stated above.

In the present case applicant is represented the manu-



facturer of a certain liquid substance used for illumination. Instead of affixing the peculiar sign, which is to indicate the ownership or origin of his manufacture, to the cask or other vessel in which it is to be sold, he adopts the plan of imparting that mark to the substance itself. Apparently his plan is the better, since it avoids the danger of refilling his casks with an inferior article by unauthorized persons. The mark goes with the manufacture to the point of consumption. It is certain, distinguishable, not to be effaced. As a mark it seems entirely sufficient. Does it infringe upon any rights belonging to the public? Can it be placed in the same category with an article put upon the market and painted red or in any other color? Undoubtedly it would be right to refuse registration any such mark as paint of any color applied to an article. The purpose of painting an article is to give it covering, as well as color, and it is a matter of common use, whatever the color; but in this case, the coloring is a mark-pure and simple- an arbitrary sign, for the applicant is not claiming a red color applied to any fluid, nor a color applied to a fluid which may be the natural result of the composition of it or of some ingredient thereof, for, as I have said, it does not arise, either necessarily or incidentally, out of the ma-

W.L.Teter, Sheet -C-

terial itself, but is foreign to it, and introduced into it simply for the purpose of designation.

For these reasons, I think the mark should be registered and accordingly reverse the decision of the Examiner.

April 19, 1877.

Subsequent to the above decision, it was discovered that certain patents had been granted for alleged improvements in oil or in methods of putting up certain oils, and the case was brought back for reconsideration. The patent nearest the subject-matter sought to be registered as a trade mark is that of Porter, No. 146,778, dated Jan. 27, 1874.

Substantially, the patent is for a method of preparing illuminating oils for sale by mixing therewith any coloring matter soluble therein, thereby distinguishing the heavy oils, or the differing gravity of illuminating oils. The question of the validity of the patent is not within my jurisdiction. It must, however, be for an invention. That invention, if it be any, must be in the method of making or marking the article, or in the article made. There is nothing in the patent to indicate that the oil, as an illuminating fluid, differs from any other oils of its

kind, or that there is anything new or improved in the method of producing the oil itself. The whole scope of the patent is limited to the method of marking. Assuming then, the patent to be a valid one, it must be for the method of marking; for an article marked, would not, without any other element of limitation or definition, be considered an invention, nor could the method or improvement in the art, though patentable, enter as an element into the article to make that patentable also. The patent, then, on the theory of its validity, is for a method of producing marks for a certain class of goods, marks in my judgment, proper to distinguish this class of goods, and within the terms of the law authorizing registration. It does not necessarily follow then, that the patentee has used the particular color specified by the applicant for registration as a mark to distinguish his goods. The inventor of a mode of marking is not, necessarily, the user or owner of all the trade marks producible by that method, whatever right he may have in his improvement in the art. But the statute provides:

"The Commissioner of Patents shall not receive and record any proposed trade-mark which is not and cannot become a lawful trade mark, or which is merely the name of a person, firm, or corporation unaccompanied by a mark sufficient to distinguish

"it from the same name when used by other persons, or which is identical with a trade mark appropriate to the same class of merchandise and belonging to a different owner, and already registered or received for registration, or which so nearly resembles such last mentioned trade mark as to be likely to deceive the public."

There appears to be nothing, therefore, in the facts before the Office to justify under the statutes the refusal to register the trade mark. Not only is there wanting evidence as to the registration or reception for registration of the same mark appropriate to the same class of goods, but there is no conclusive proof that any one ever appropriated the mark to the class of goods designated.

I am the more inclined to grant the certificate since applicant has, so far as I am aware, no remedy, by appeal, for my refusal. If there be any conflict between the registrant and the patentee, if in adopting or applying this specific color in the described way, he use any method or article which is the property of the patentee, there is ample remedy in the courts.

The certificate may be issued.

2

A P P L I C A T I O N
of
G E O. D. H I L L & C O.,

Decided May 12, 1877.

Recorded Vol. 17, Page 405.

-----oOo-----

SPEAR, COMMISSIONER:

This case is, in some respects, a doubtful one, the word sought to be registered coming very near the class of purely descriptive words, yet the word "tackless", as applied to boots and shoes, is certainly not purely descriptive, not in the sense in which we should use the words leather, India rubber, water proof, and the like. It is not an obviously descriptive word, and, I think, may be classified with that registered in the case of Glines, C.D., 1875, page 97.

The decision of the Examiner is therefore, reversed, and the trade mark will be registered.

A P P L I C A T I O N
of
W A R N E R B R O T H E R S,

Decided May 23, 1877.

Recorded Vol. 17, Page 414.

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DOOLITTLE, ACTING COMMISSIONER:

Looking at this article as a single thing, an entirety, as a "stocking supporter" so claimed in the patent and described in the present application, I hardly think the term "duplex" is descriptive.

Descending to an analysis of its parts it would be found to be "multiplex", but regarded as a single article, its parts all connected, and all necessary to constitute the complete thing - it appears to me that to be "duplex" the entire article should be doubled - there should be a pair of them, as we would speak of the pair of stockings, to which the article is to be applied.

Without, however, entering into a discussion as to the fine distinctions of the word that might be made, I am disposed to give the applicant the benefit of the doubt.

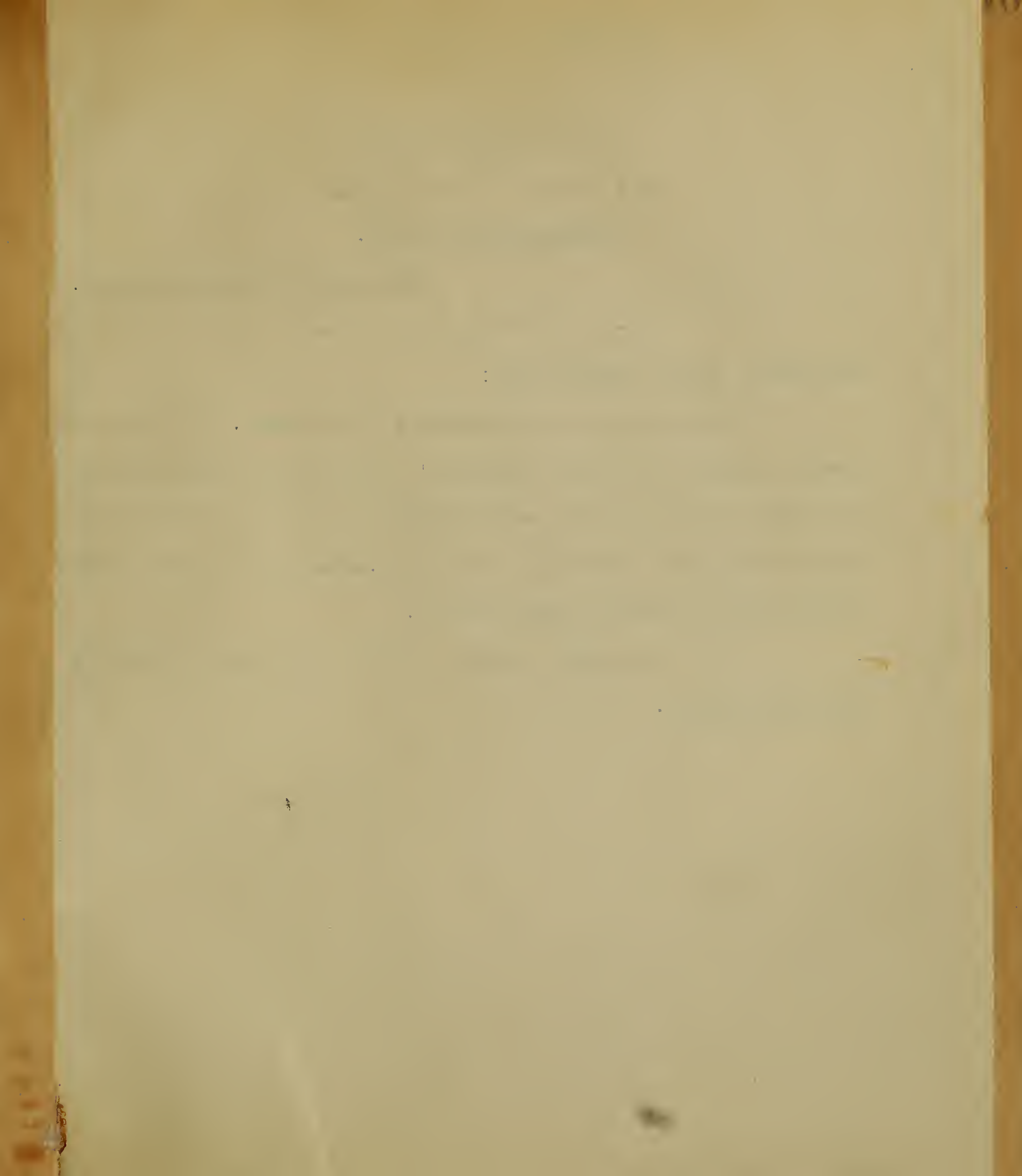
Neither do I think the term deceptive, as the simple inspection that would be given by the public to the article before purchasing would inform them as to the character of it.

The decision of the Examiner of Trade Marks is therefore reversed.

THE HISTORY OF THE
CITY OF BOSTON

FROM THE FIRST SETTLEMENT
TO THE PRESENT TIME
BY
JOSEPH NEALE
OF BOSTON
IN TWO VOLUMES
VOL. I.
BOSTON: PUBLISHED BY
JOSEPH NEALE, 1825.

THE HISTORY OF THE
CITY OF BOSTON
FROM THE FIRST SETTLEMENT
TO THE PRESENT TIME
BY
JOSEPH NEALE
OF BOSTON
IN TWO VOLUMES
VOL. II.
BOSTON: PUBLISHED BY
JOSEPH NEALE, 1825.



Label

A P P L I C A T I O N
of
S M I T H & R I S I N G,

Decided May 31, 1877.

Endorsed on Examiner's Brief.

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DOOLITTLE, ACTING COMMISSIONER:

The decision of the Examiner is affirmed. The term and brand described are purely fanciful' A label is simply designed to denote the name of the manufacturer, or place of manufacture, quality of goods, directions for use &c., and not to cover arbitrary matters of fanciful signification.

It is decidedly fanciful to call the cigars of Smith & Rising, "Nicots".



A P P L I C A T I O N
of
S A M U E L R O B B I N S,

Decided May 31, 1877.

Endorsed on Examiner's Brief.

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DOOLITTLE, ACTING COMMISSIONER:

The decision of the Examiner is affirmed. "Peerless" is regarded as an entirely fanciful arbitrary term when applied by one person to an ointment or any other article of manufacture for the purpose of distinguishing the same from similar articles made by others.

Plan of Mass

A P P L I C A T I O N
of

M A N N Y & C O M P A N Y,

Decided June 22, 1877.

Recorded Vol. 17, Page 155.

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DOOLITTLE, ACTING COMMISSIONER:

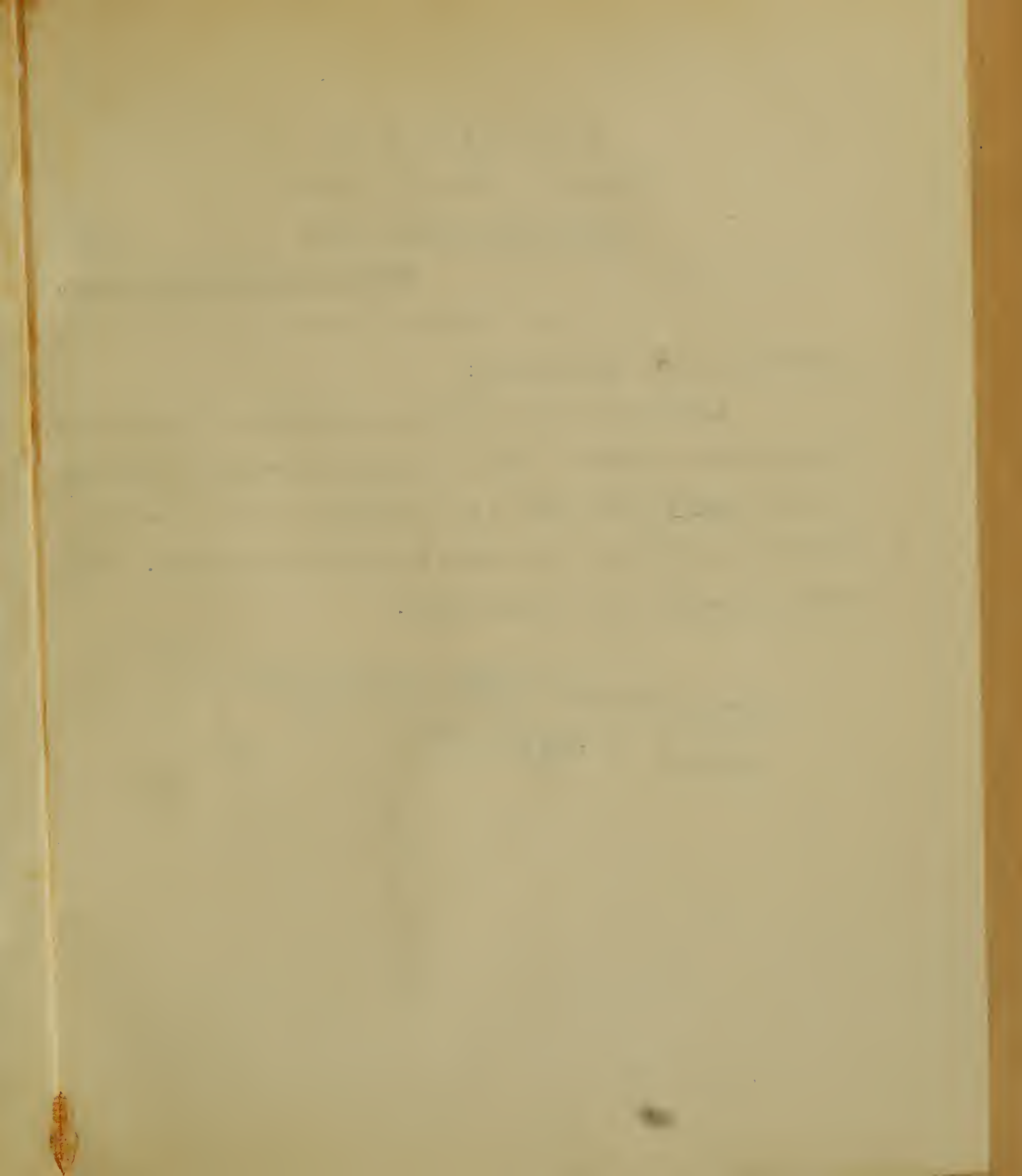
Applicants describe themselves as engaged in the manufacture and sale of Agricultural Implements generally. They wish to cover the whole class of merchandise called "agricultural implements", and every description of goods comprising such class. It is precisely a parallel case to that of Smith et, al. vs. Reynolds & Jacobs. (3 O.G. 214),- the doctrine of which was reiterated by the Commissioner in the case of Boehm & Co., (8 O.G. 319). It would appear from this decision, that where an applicant intends to cover a whole class of merchandise it is unnecessary to mention every particular description of goods comprised in such class--the law only contemplating, that when he intends to confine himself to a particular description of goods in any class, that he should mention the same. To hold that wherever he intends to cover the whole class that he should mention every description of goods within that class would render the law somewhat absurd in

its operation; as it would take great space and time to complete the list of all articles manufactured in some classes.

As was observed in the case of Boehm it may be a very bad practice ~~to~~ to use such comprehensive terms, but the evil results appear to fall on those applicants alone who take the risk. The evil resulting to an applicant in such case might arise as it did in the Smith & Reynolds case, by some one else being able to show that they had adopted the same trade mark to a particular description of goods comprised within a general class, subsequently adopted by the complainants. The court holding, that the registration not being valid as to the whole extent was not valid in part; but this is not the concern of the Office.

In view of the above doctrine, I think the position of the Examiner, that a subsequent applicant who desired to register this mark upon a certain article of the class would not be anticipated by the present registration is ~~incorrect~~; but a previous registration upon any article of this class would be a proper reference to the application now made.

The decision of the Examiner of Trade Marks is reversed.



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A P P L I C A T I O N
of
T H E O D O R E C U R R A N,

Order Given June 28, 1877.

Helte

Endorsed on Examiner's Brief.

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DOOLITTLE, ACTING COMMISSIONER:

Inasmuch as there has been no examination in this case, further than to determine that the matter presented for registry is not a lawful trade-mark, I am of opinion that the practice should be so modified as to admit the proposed amendment. This order may apply to all similar cases.

*Amendment to the amendment as to
show a legitimate T M*



A P P L I C A T I O N
of
C O R N W A L L & B R O T H E R,

Decided June 29, 1877.

Recorded Vol. 17, Page 466.

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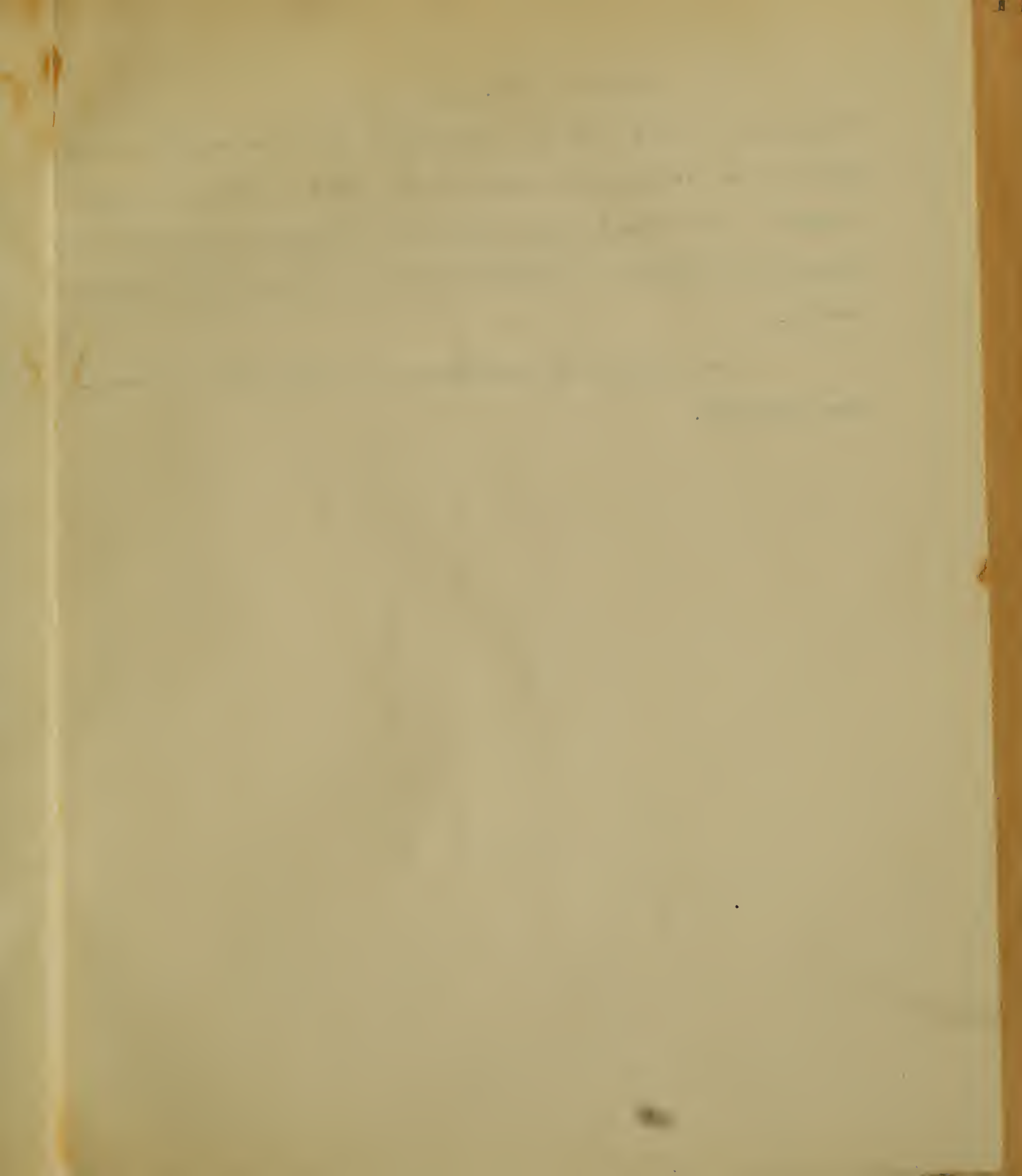
DOOLITTLE, ACTING COMMISSIONER:

Applicants seek to register an arrangement of a star and crescent applied to soap, as their trade mark. They are referred to a registered trade mark, consisting of the figure of a star alone, also applied to soap. And it is contended by the Examiner, that the employment of the former combined symbol would be likely to deceive those desirous of purchasing soap having the last named brand.

It is a question of judgment and is to be determined upon the probabilities of the case, as was substantially held in the very similar case of Imbs, 10 O.G., 463.

The flags of at least two nations are distinguished by almost the same difference in symbol as that employed by applicants, to distinguish their soap from the registrants, to whom they are referred.

The flag of Egypt is a crescent on a red ground, and the



Turkish man of war flag is a crescent on the same colored ground.

There is no mistaking one flag for the other by persons of the slightest discernment; and I think the same may be said when those symbols are applied in a similar way to the soap of two different owners.

The decision of the Examiner of Trade Marks is therefore reversed.

A P P L I C A T I O N
of
FARMER'S FRUIT PRESERVING CO.,

Decided July 5, 1877.

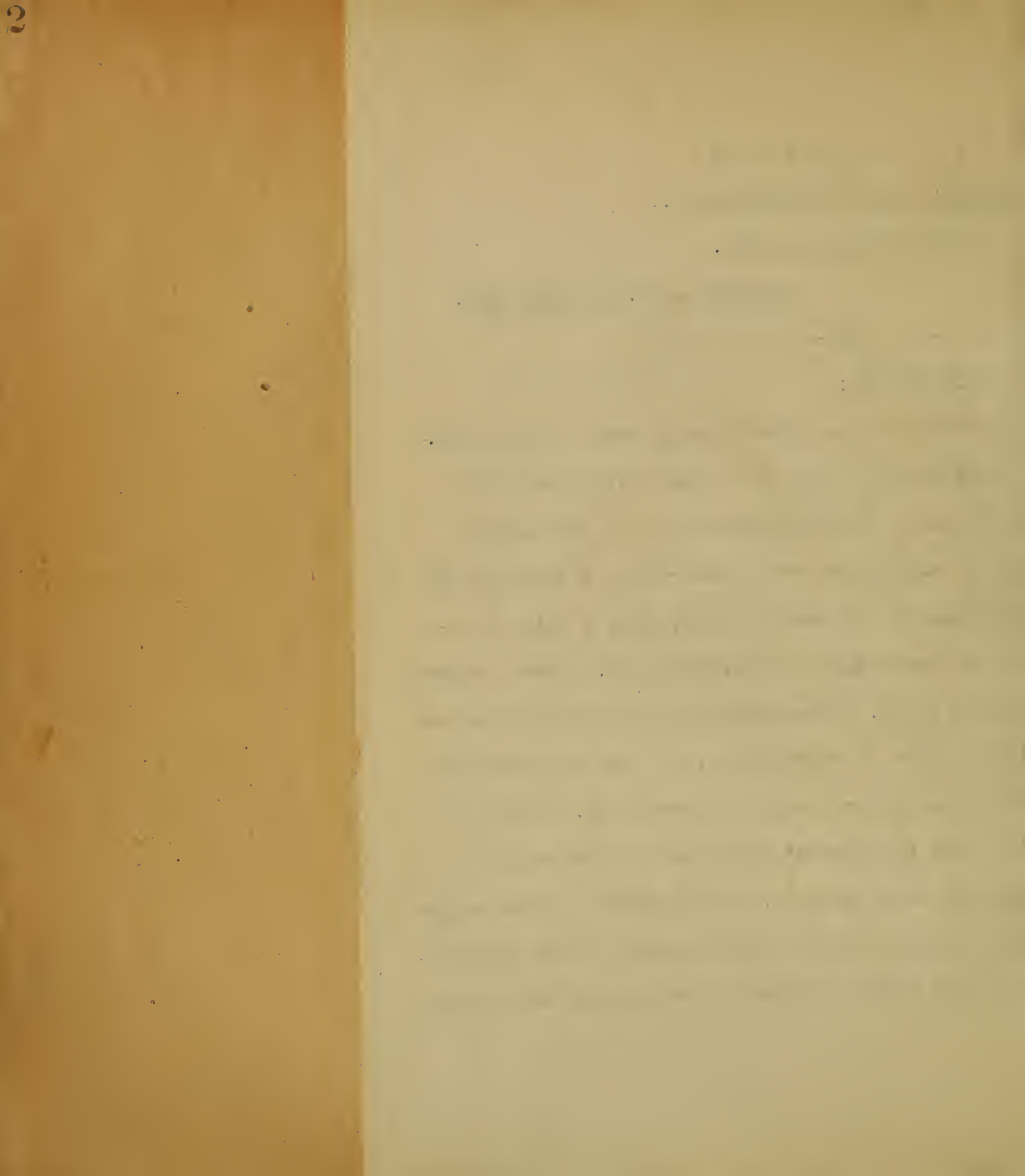
Recorded Vol. 17, Page 468.

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DOOLITTLE, ACTING.COMMISSIONER:

As to the matter of the word "Rising Sun", and the representation of the ~~word~~ rising sun, to be used either alone or both together, the decision of the Commissioner in the case of Weaver, 10 O.G. 1, so completely covers the case and controls the practice, until reversed by the Commissioner, that I fail to understand the action of the Examiner in ignoring it. There is some doubt as to the second point. Preserved fruits and vegetables are either are a distinct class of merchandise, or else a description of goods comprised in the general class of groceries. Taken in its broad sense the word "preserves" alone covers the matter to which the trade mark is to be applied, and correctly indicates the class of merchandise prepared by the Farmer's Fruit Preserving Co.

Viewed in this light the Examiner's decision must be reversed.



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Q. XII p 312

A P P L I C A T I O N
of
C O R N W A L L & B R O T H E R S

Decided July 7, 1877.

Recorded Vol. 17, Page 475.

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DOOLITTLE, ACTING COMMISSIONER:

The trade mark sought to be registered, consists of the word "Dublin" to be printed upon labels applied to boxes of soap:-

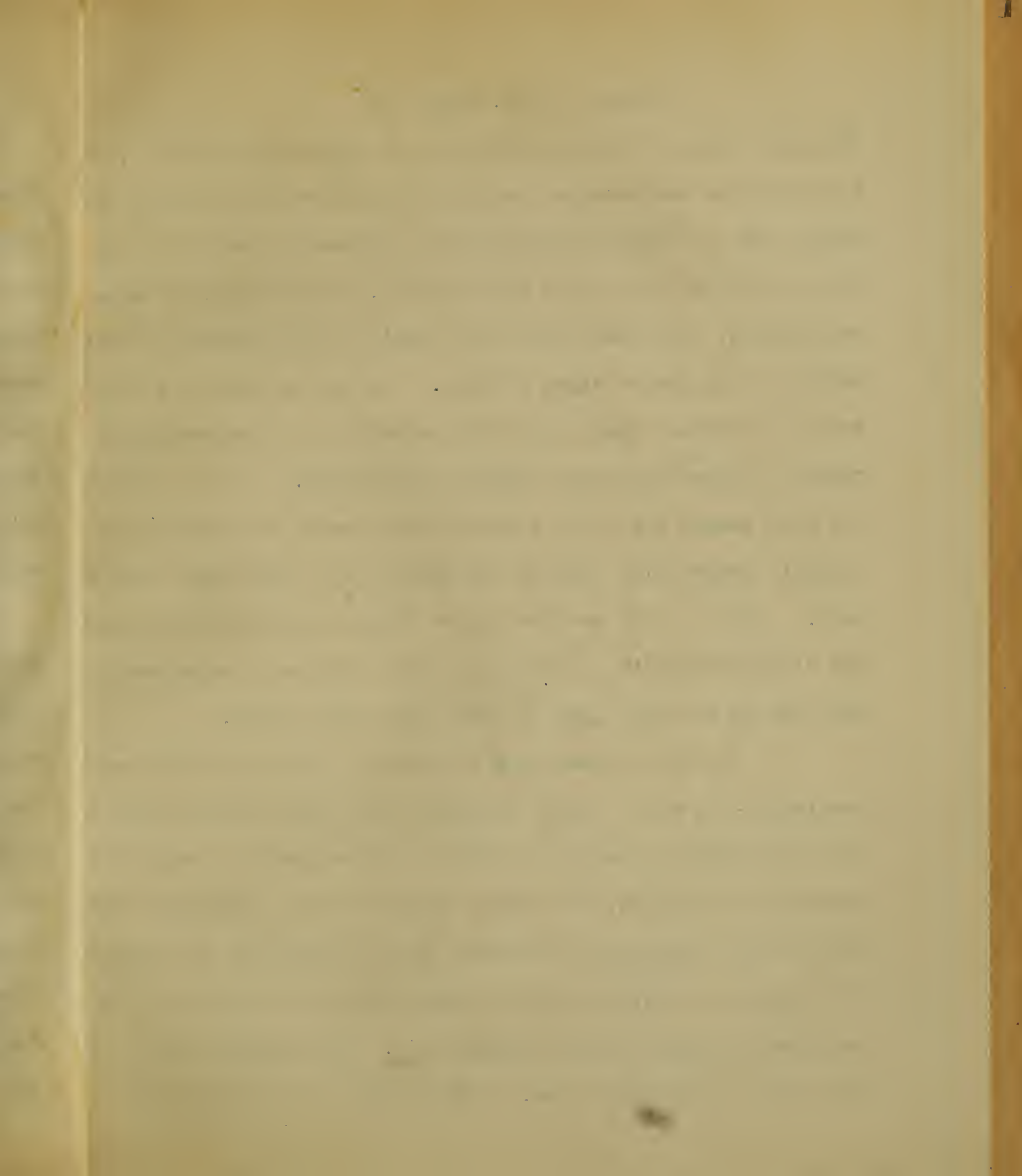
It is a general rule that the name of a district, town or city cannot be appropriated as the exclusive property of any one. High on Injunctions, Sec. 673; Bispham Eq. 411; Wolfe vs. Goulard, 18 How's. Pract. Rep. 64; Brooklyn White Lead Co., vs. Masury, 25 Barb. 416; Newman vs. Alvord, 49 Barb. 588; Candee vs. Deere Sup. Ct. of Ills., 10 Am. Law Reg. U.S. 694; Delaware & Hudson Canal Co. vs. Clark, 13 Wallace 311; Glendon Iron Co. vs. Uhler, 6 O.G. 154; Lewis N. Green, C.D. 8 O.G. 729.

Are there any circumstances which make the present application an exception to that rule?

Applicants do not make their soap in Dublin, Ireland, but in this country, and therefore contend that the term is not descriptive in any sense, but an entirely arbitrary symbol.

In the case of Green, above cited, the Commissioner indicated the practice of the Office in regard to these geographical names. If they are descriptive of a certain place or locality where the goods or articles to which they are to be applied are produced, then they are objectionable on the same ground that all merely descriptive words are objectionable as trade marks. It would appear that it was solely in respect to this objectionable quality that the Supreme Court refused to extend its protection to the term "Lackawanna" applied to coal obtained from the district bearing that name.

"It is obvious", said the Court, "that the same reasons which forbid the exclusive appropriation of generic names or of "those merely descriptive of the article manufactured and which "can be employed with truth by other manufacturers, apply with "equal force to the appropriation of geographical names, designating districts of country. Their nature is such that they cannot "point to the origin (personal origin) or ownership of the articles of trade to which they may be applied. They point only at "the place of production, not to the producer, and could they be "appropriated exclusively, the appropriation would result in mischevious monopolies. Could such phrases as "Pennsylvania Wheat",



"Kentucky Hemp", "Virginia Tobacco", or "Sea Island Cotton", be
"protected as trade-marks; could any one prevent all others from
"using them, or from selling articles produced in the districts
"they describe under those appellations, it would greatly embar-
"rass trade, and secure exclusive rights to individuals in that
"which is the common right of many. It can be permitted only
"when the reasons that lie at the foundation of the protection
"given to trade marks are entirely overlooked. x x x x x Nothing
"is more common than that a manufacturer sends his products to
"market, designating them by the name of the place where they were
made. But we think no case can be found in which other producers
"of similar products in the same place, have been restrained from
"the use of the same name in describing their goods."

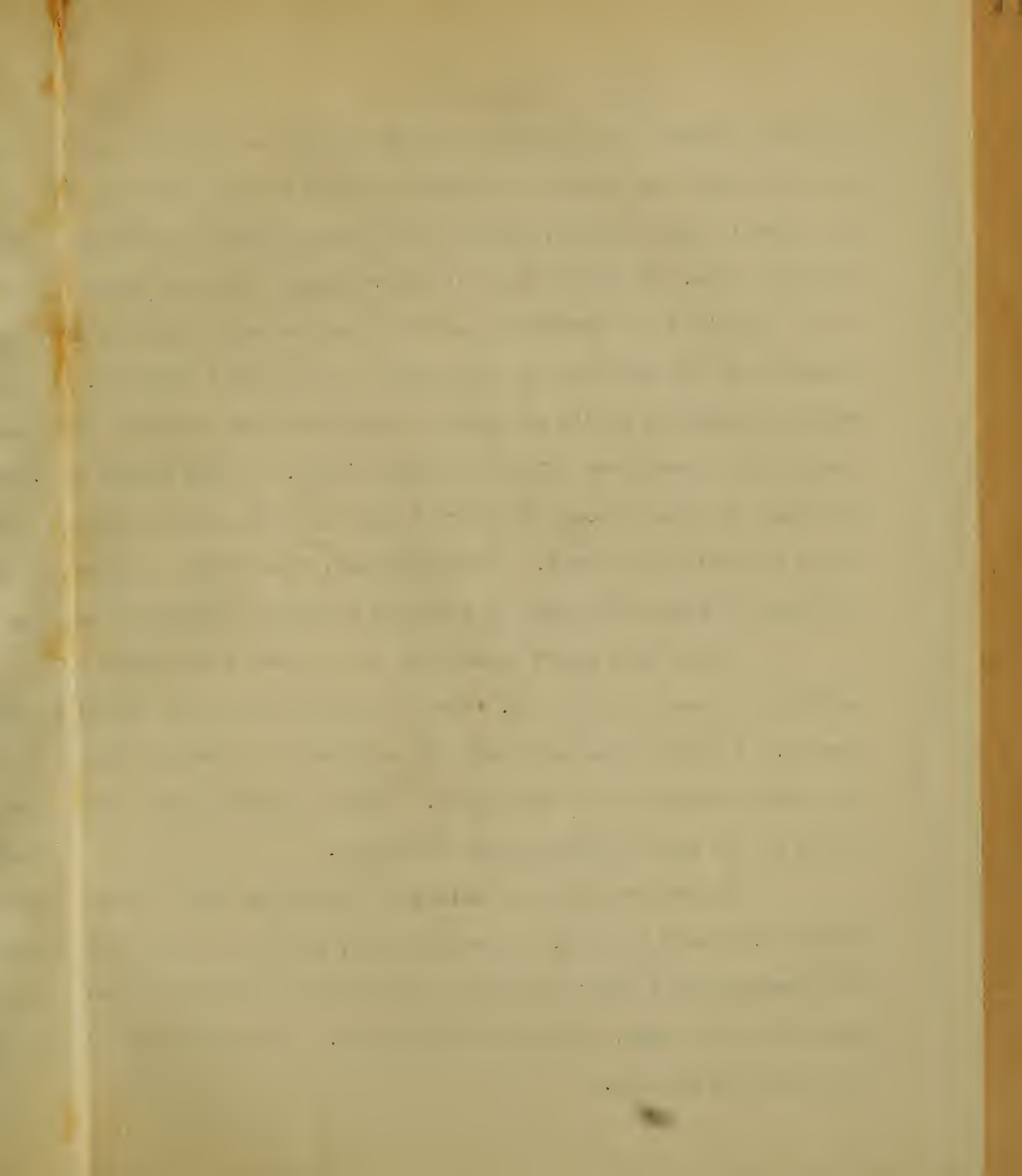
And after discussing the various cases cited the court
concluded--"It must then be considered as sound doctrine that no
"one can apply the name of a district of country to a well known
"article of commerce, and obtain thereby such an exclusive right
"to the application as to prevent others inhabiting the district
"or dealing in similar articles coming from the district, from
"truthfully using the same designation." The language here quoted
would not, it appears to me, be applicable to a geographical name

wholly fanciful in its signification.

Further it does not appear that the element of fraud enters into this application. There is no evidence of the fact that there is any soap on the market known as "Dublin" Soap. If such were the fact the Office would be justified in refusing registration on the ground, that the adoption of the same title by applicants would be deceptive and a fraud upon the public. "Dublin Brown Stout" has a well known reputation. The fact of its notorious use would be conclusive evidence of fraud as against a citizen of another place who asserted the right to use the term as designating his product.

So, in Alvord vs. Newman, parties in the State of New York were enjoined from using the word "Akron", a name of a town in Ohio, upon cement; the purpose evidently being to induce the public to believe that the article made by the defendants in New York, was the the same as that made by the plaintiffs who were in Ohio. It was a case of an attempted fraud - although it was also determined that the plaintiffs could acquire no exclusive right to the use of the word as against anyone producing a similar article at the same place.

As to any deception in this particular place, in view of



the fact alluded to by counsel for applicants, of the exclusive use throughout the country of labels applied to soap manufactured by firms in this country, bearing the titles "Irish", "Limerick", "Scotch", etc., the public generally have become aware of their purely fanciful signification and would not be very likely to be deceived by the addition to this medley, of the word "Dublin". Neither would the public probably be convinced that a sudden importation of soap from Dublin had taken place. If the symbol was the name of a well known district or city in this country the case might be wholly different. "Philadelphia", "New York", "Baltimore" attached to soap might have an entirely different signification.

It is thus found impossible to lay down a rule that would cover all cases of this kind. Each case must stand upon its own ground. A certain geographical name applied to an article might be either descriptive or deceptive. Another geographical name applied to the same article might be neither.

My conclusion as to this application is, that the word "Dublin", as here applied, is not intended, and has not the effect of a geographical word; and that in view of the peculiar circumstances of the case, is also not deceptive. Its registration will therefore be allowed.

A P P L I C A T I O N
of
F R E D E R I C H. H A L L,

Decided July 7, 1877.

Recorded Vol. 17, Page 472.

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DOOLITTLE, ACTING COMMISSIONER:

It is thought the Commissioner's decision in the case of
Green, 8 O.G. 729, covers this case.

Some of the circumstances are also similar to those in
the "Dublin" case, this day decided.

The decision of the Examiner is therefore reversed.

Amended Enunciated Filing

A P P L I C A T I O N
of
D U N D A S D I C K,

Decided July 13, 1877.

Recorded Vol. 17, Page 489.

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SPEAR, COMMISSIONER:

I have doubts whether the words used in this connection, are strictly descriptive; and further it appears that these words are recognized as a trade mark, rightfully in use on the 8th day of July 1870, and that they had so been used for a long time by the applicant unquestioned.

For these reasons the decision of the Examiner is reversed, and the trade mark may be registered.

John Capron

Label fee

A P P L I C A T I O N
of
C H A S. F. H U R L B U R T,

Decided Aug. 3, 1877.

Endorsed on Examiner's Brief.

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DOOLITTLE, ACTING COMMISSIONER:

In view of the late practice of the Office in matters of this kind by which it has been held - that the filing of an application for the registration of a trade mark of matter which is clearly a label, and the payment of a trade mark fee thereon, constitutes a mistake in law, the law requiring that labels shall not be registered as trade marks, the fees in these cases will be returned in accordance with Section 4938 Revised Statutes.

A P P L I C A T I O N _
of
R O B E R T S N E I D E R,

Decided Aug. 24, 1877.

Recorded Vol. 18, Page 62.

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DOOLITTLE, ACTING COMMISSIONER:

Applicant originally described his trade-mark as consisting of "a perforated paper covering which is applied to the "bottom, top or sides of the boxes, or said boxes may be completely covered and surrounded by such a covering of perforated paper "or the representation thereof.

"The said trade mark may also be used by applying a representation of perforated paper in suitable manner, to the cards, "show cards, or other notices which advertise the said boxes to "the public."

This was objected to on the ground that the matter described did not constitute a trade-mark; that what was sought to be protected was a species of merchandise itself and not an arbitrary symbol to be applied to merchandise. Whereupon applicant amended his case to read "The said trade mark consists of a perforated paper which is placed flat against the bottom, top and

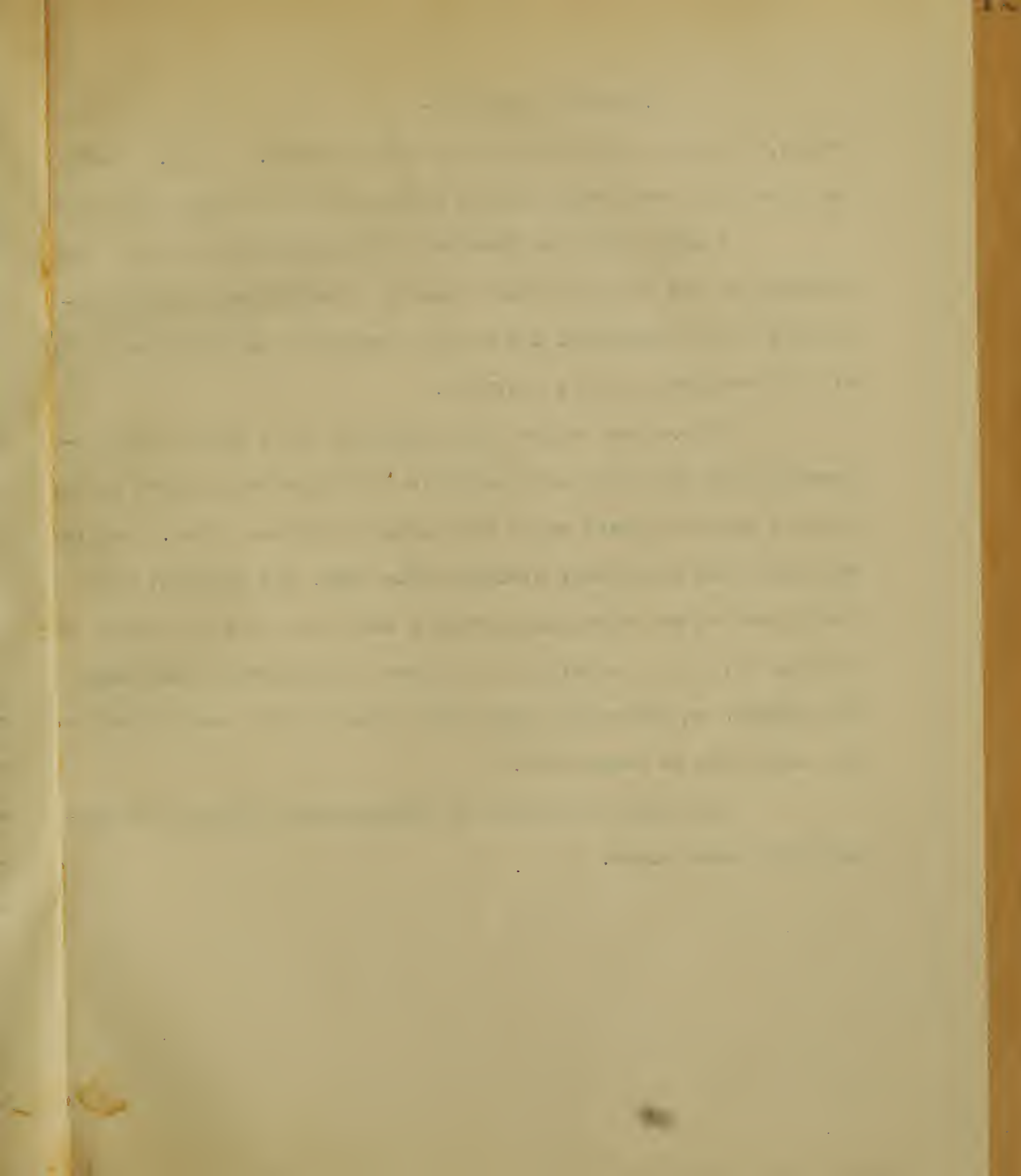
"sides of the boxes, or against either of them, or of the representation of such perforated paper."

The Examiner reiterated his objections and cited the decision of Judge Johnson in the case of Harrington vs. Libby, since published in 12 O.G. 188 - setting forth that the forms and materials of packages to certain articles of merchandise could not be claimed as trade-marks - an enveloping package not being a name, symbol or assertion of origin or ownership.

Again the applicant amended his description as follows:-

"The trade mark consists of a series of circular marks applied to the labels which is placed against the outside of each of the boxes. The label is to be provided with large numbers of said circular marks arranged in rows, as shown in the fac-simile. The said trade mark is effectually produced by punching or embossing the label, so as to produce the circular marks, but may also be formed by printing the circular marks upon said label in suitable colors."

The Examiner still insists that the amendments do not avoid the objections urged against the original application, and urges that, "if the applicant had confined himself to a definite and precise symbol cut out of perforated paper, and applied to his



"boxes, the application might have been allowed. x x x. There is
"an indefinite and comprehensive appropriation of public property"

I agree with the Examiner in his exposition of the law relating to the requisite qualities of a trade mark, and the applicant in his arguments and by his amendments appears also to admit the soundness of his position.

The object of the last amendment is to obviate the objection that the trade mark consists of the material known as perforated paper or paste board when used to enclose a box. Let the applicant now distinctly disclaim this idea, and restrict his trade mark to an impression having a definite shape or figure, consisting of, or in imitation of a piece of perforated card board to be stamped, or otherwise placed upon boxes of his manufacture, and the same will be registered.

Otherwise the action of the Examiner refusing the registration must stand.

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A P P L I C A T I O N
of
E D W A R D W A R B U R G & C O.,

Decided Aug. 25, 1877.

Recorded Vol. 18, Page 65.

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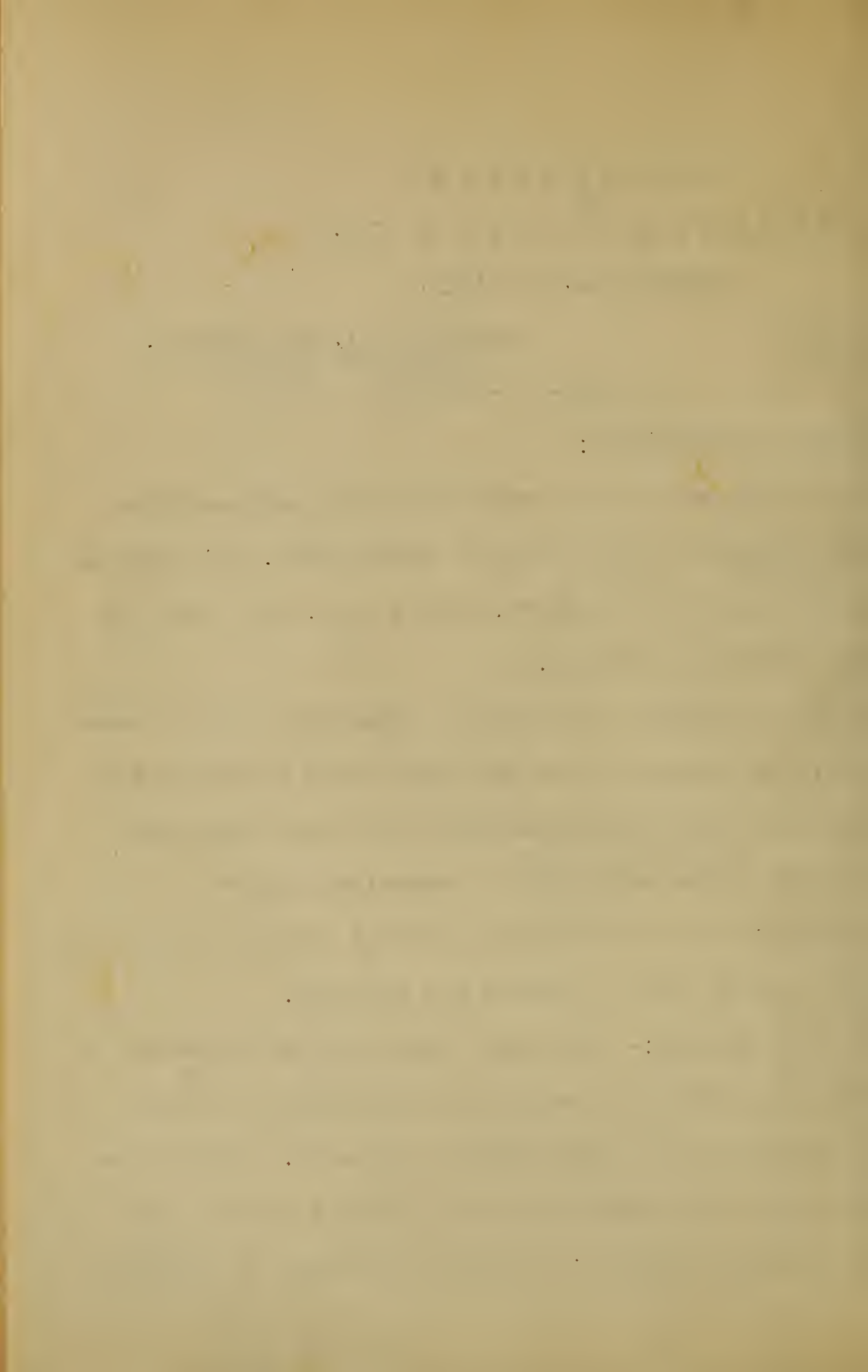
DOOLITTLE, ACTING COMMISSIONER:

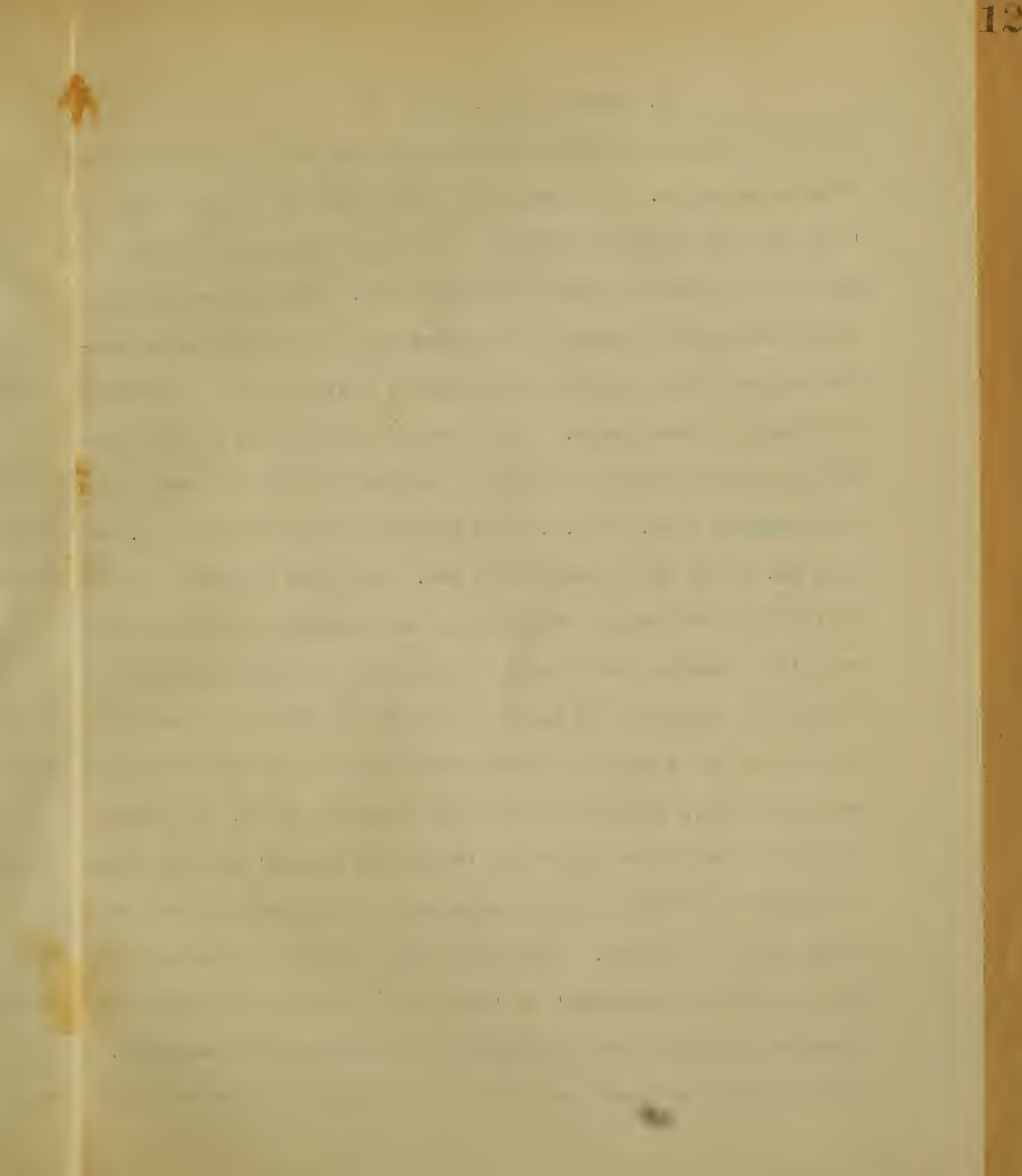
Applicants ask to have registered as a trade mark the term "Cachemire-Milano" to be applied to black silks. The term is used in connection with the words "R. Savøie & Co." and with the picture of the Cathedral of Milan.

If not previously registered in connection with the same class of goods, the picture of the cathedral would be accepted as a proper trade-mark; but applicants assert that the "essential part of their mark is the word symbol "Cachemire-Milano"

The decision of the Examiner of Trade Marks on this point is exhaustive, I think, and is adopted and affirmed.

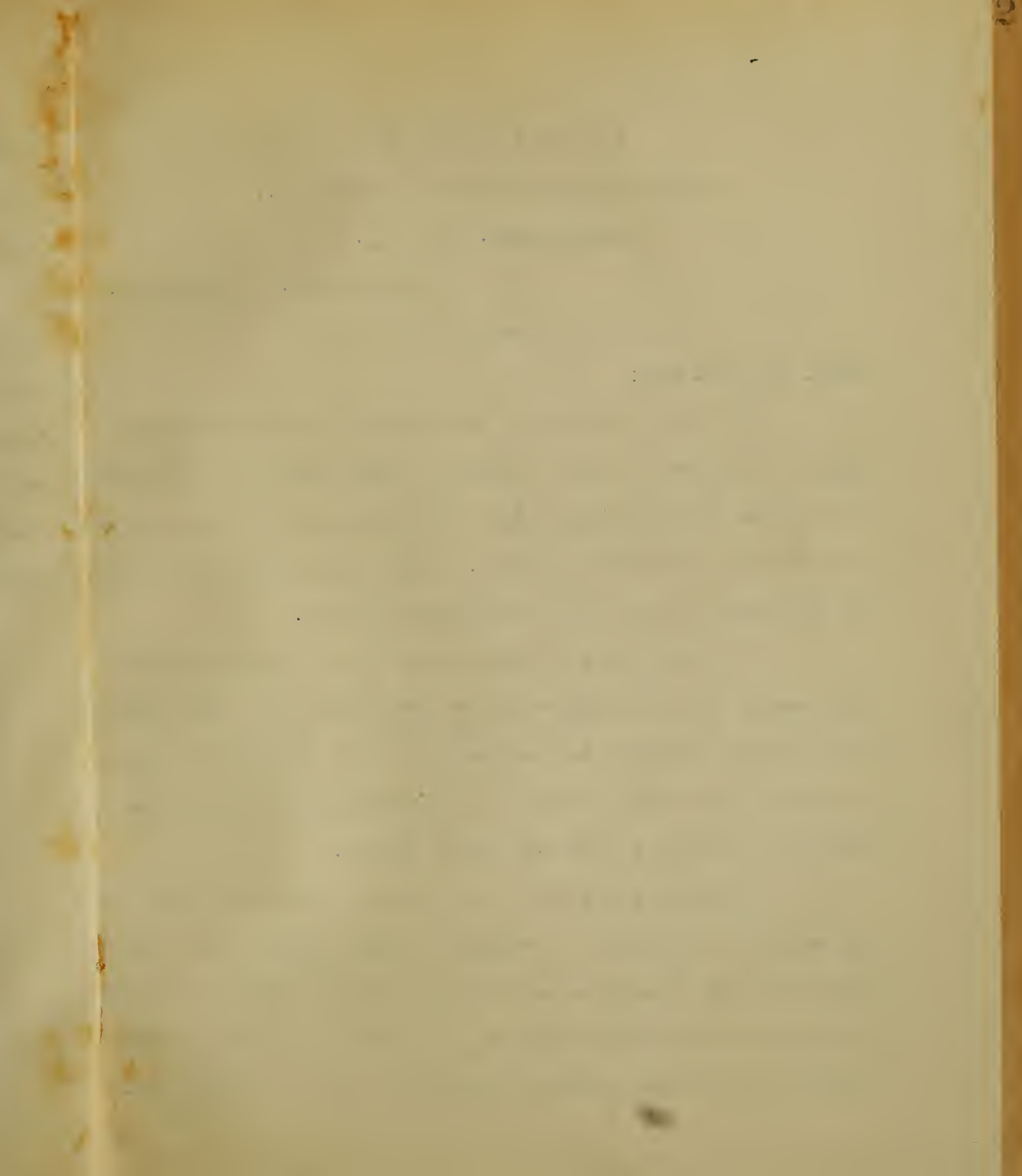
It is as follows:- "The word "Cachemire" or Cashmere" is "not arbitrarily selected as a mark for silks, because it might "easily have reference to a peculiarity of the silk. It would be "the appropriate and only appellation for a fabric uniting the "qualities of Chasmere and Silk; it might be applied to a species





"of silk resembling Cashmere in appearance, or in the processes of
"its manufacture. As a matter of fact there is a well known vari-
"ety of silk, characterized by a soft and lustreless finish, which
"goes by the name of Cashmere Black Silk. The applicant is there-
"fore seeking to register the proper name of an article of com-
"merce, and his proposed mark would in fact give him a monopoly in
"the sale of such goods. The law is well settled on this point,
and it is sufficient to refer to the decision of the Commissioner
"in Lawrence & Co. 10 O.G. 163, and to case of Fetridge vs. Wells,
"Cox Am. Trade Mark Cases, page 183. The word "Milano", or Milan,
"which by itself might conceivably be a fanciful term as applied
"to silk, becomes itself significant from its connection with a de-
"scriptive term, and to allow applicant to register it would
"prejudice the rights of those residents of Milan who might desire
"to manufacture and advertise Milan Cashmere Silks. In case it
"should be held that the words 'Cachemire Milano' are not descrip-
"tive they must then be held according to the practice of the Of-
"fice to be deceptive. They have not the merit of being newly
"coined like 'Castroleum' or 'Cocoaine' nor of being symbolically
"used as "Rising Sun" when applied to an article of commerce. They
"are, in their proposed use, merely a misnomer and are calculated

"to deceive. American Sardine Co. C. D. 1873, page 33. An in-
"spection of the goods might or might not undeceive the purchaser
"but this does not go to the essence of the objection. The mark
"is false and tends to deceive, and that is conclusive against the
"applicant. The same answer lies to the argument of Attorneys
"that the name of an inferior article is applied to a superior
"one. In fact, if the words in question are held not to be de-
"scriptive the case is so perfectly analogous to that of the Amer-
"ican Sardine Co., above cited, that further argument is deemed
"unnecessary."



A P P L I C A T I O N _
of
THE DAUSMAN AND DRUMMOND TOBACCO CO.,

Decided Aug. 29, 1877.

Recorded Vol. 18, Page 711.

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SPEAR, COMMISSIONER:

The mark for which a certificate of registration is asked, is applied to what is known as "plug tobacco", and consists of a series of transversed marks impressed upon the plug, or printed upon paper and pasted thereon. Applicants also propose to use the same symbol upon their circulars and bills.

I understand the Examiner to refuse the registration for the reason, that the mark is not of the nature of a trade mark, and that its functions and purpose is not to indicate the quality or origin of the manufacture but the measurement of the pieces that are to be cut off by the retail dealer.

Upon the first point it is to be considered, that the law makes no limitation in respect to Trade Marks, other than that they shall not be such as could not be appropriated by any person by reason of the common right of all to use such words or symbols, and with the further general restriction, that the mark shall be

sufficient to indicate origin, ownership, and the like.

The mark may be any arbitrary symbol whatever, as a star, figure of an animal, boar's head; and numbers arbitrarily chosen. (See Brown on Trade Marks, Par. 87; Boardman vs. Meriden Britannia Co., Cox Trade Mark Cases, page 490, Filley vs. Fassett id 530.)

Referring to the Examiner's objection that the mark is designed for a useful purpose and not for a trade mark, the first consideration is, that there is no evidence of this, so far as I can discover; and a right to registration not invalidated for any other reason cannot be denied on mere suspicion. Nor do I think that it would invalidate a trade mark, if being significant as a trade mark, it should also serve some useful purpose.

There is some indefiniteness in the statement of the mark, it being left in uncertainty whether it consists of a transverse, or transverse and longitudinal lines. This should be corrected.

In view of these considerations I am constrained to overrule the decision of the Examiner of Trade Marks, and direct, if no further objection exists, that this trade mark be registered.

Label

A P P L I C A T I O N
of
J A M E S B U C H A N, J R.,

Decided Oct. 6, 1877.

Endorsed on Examiner's Brief.

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DOOLITTLE, ACTING COMMISSIONER:

In the cases relied upon by the Examiner to sustain his action protection was sought to be obtained on matter constituting a trade mark under color of a label registration. If the demands of applicants in those cases had been acceded to the certificate of registration would have set forth the ornamentation as part of the label.

But in the present instance the ornamentation is disclaimed, cannot appear in our certificate of registration, and no protection thereto is asked or can be granted. I see no harm therefore in allowing it to stand in the specification as it is short, although it might be regarded as surplusage.

The decision of the Examiner of Trade Marks is reversed.

As above remarked the alleged objectionable matter may remain in the specification; but the specification in label cases are not printed. In lieu thereof a certificate is given in which

is recited that the "copy of said label" is thereto attached. It follows then that the fac simile attached to the certificate should contain only such matters as constitute the actual and precise label. The applicant therefore is required to furnish a fac simile to attach to the certificate which will embrace alone the precise registered matter.

A P P L I C A T I O N
of
C H A R L E S K N O X,

Decided Oct. 12, 1877.

Recorded Vol. 18, Page 90.

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SPEAR, COMMISSIONER:

The essential feature of the trade mark consists of the two birds. Substantially the specification states that the exact shape of the birds, or whether with wings closed or displayed, is not material.

If the applicant were confined to the precise species of birds, or the particular form of birds, then the trade mark might be infringed with impunity. Ordinary observers would not notice such small differences, and seeing birds on each side of a shield, as a trade mark, might easily mistake it for the trade mark of applicant, although the birds were eagles in one case and falcons in the other.

What applicant stated in the specification, I understand to amount to no more than this, and I do not think these statements objectionable. For the conclusions of law which may be drawn from the specification I do not think the Office responsible. The statement is that of the applicant. Provided it does not misrepresent the mark or describe it too broadly, or fail to describe it distinctly, so that injury might arise to the public from such failure, the Office would not be particular to inquire into other matters might be considered mere matters of taste. The decision of the Examiner is overruled, and the mark will be registered upon the specification presented.

A P P L I C A T I O N
of
THE RUBBER CUSHIONED AXLE COMPANY,

Decided Oct. 12, 1877.

Recorded Vol. 18, Page 89.

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SPEAR, COMMISSIONER:

The trade mark consists essentially of the words "Cushioned Axle", and is applied to the axle or axle boxes sold by this Company.

The case is a marginal one, and such as would not make a good precedent in either direction. I incline, however, to the opinion that it would be better to give applicants the benefit of the doubt, and register the mark. The words are, to some extent, descriptive, that is to say, they are suggestive of the structure of the articles to which they are applied. They are, however, not descriptive, as the word "iron" or "wooden" applied to describe an axle. If the words were used to convey an idea of the article to those who had not seen it, they would manifestly fail to give any adequate conception of that article. It cannot, therefore, be purely descriptive.

It appears that the applicants are the manufacturers of

this article. They desire to select the term which should be a name of the goods - brief, convenient and proper. In following this purpose they have selected the words quoted above.

The registration of this trade mark, and its enforcement would not, I think, restrict the public in the use of language necessary to describe such axles and hubs. For instance, it would not prevent manufacturers from calling their hubs, providing they were manufacturing such as this, hubs provided with elastic boxes, or hubs having springs to take up the ^{1/4}crust of the axle.

With these views, and though regarding the case, as I have said, a marginal one, I am inclined to overrule the Examiner, and direct the mark to be registered.

A P P L I C A T I O N
of
THE SPRINGFIELD COLLAR CO.,

Decided Oct. 12, 1877.

Recorded Vol. 18, Page 91.

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SPEAR, COMMISSIONER:

Both the reasoning of the Examiner and the decision of the Court referred to by him are satisfactory to me, and I accordingly affirm the decision of the Examiner.

Package damaged at the TM?

A P P L I C A T I O N
of
J A M E S L. L I B B E Y,

Decided Oct. 12, 1877.

Recorded Vol. 18, Page 91.

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SPEAR, COMMISSIONER:

I agree with the Examiner in his conclusions respecting this case.

The subject-matter is not a trade mark for collars, but a peculiar box in which collars are to be placed for sale. The Examiner's reasoning appears to me to be clear and conclusive, and sufficient without the judgment of the Court in the Springfield Collar Company.

The decision of the Examiner, is, therefore, affirmed.

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A P P L I C A T I O N
of
H A V E M E Y E R S & E L D E R,

Decided Oct. 27, 1877.

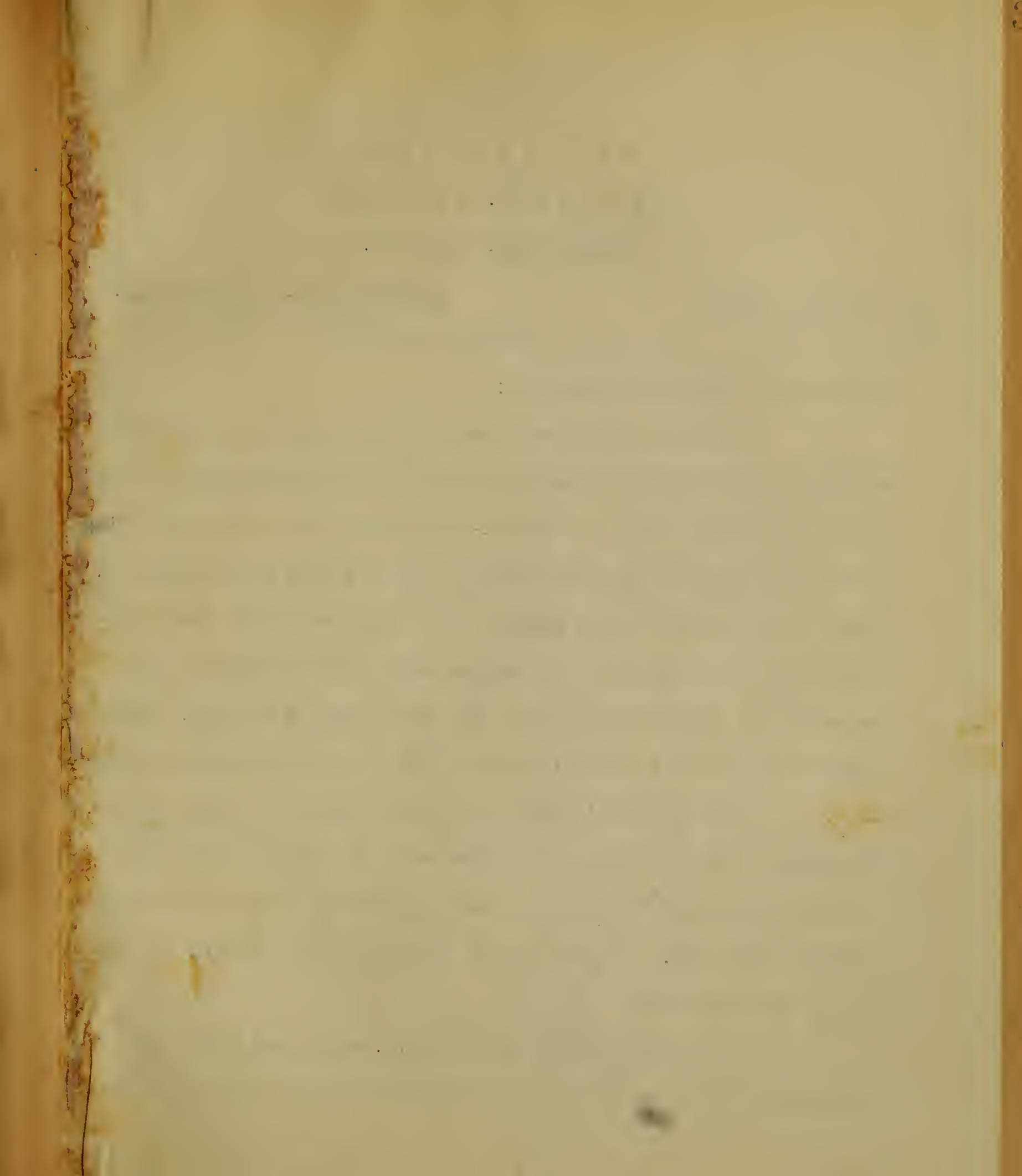
Endorsed on Examiner's Brief.

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DOOLITTLE, ACTING COMMISSIONER:

I see no objection to using the first four figures in this case as they are small, will not encumber the record nor confuse the public; but the last two, are in all these respects, objectionable, and to this extent the decision of the Examiner is affirmed.

Multiplex 1/2000 miles



Label

A P P L I C A T I O N
of
T H O M A S E. P A R K E R,

Decided Nov. 13, 1877.

Recorded Vol. 18, Page 127.

65 1170 614
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DOOLITTLE, ACTING COMMISSIONER:

Applicant describes his label as consisting of "the figure of a boy" and the words "Scratch my back" surrounded by a border of parallel lines, as shown:- the figure and the words being formed of numerous squares printed and arranged as represented. "This label is for use on cards or sheets of abrasive paper or cloth, and as a pattern for sample work to be wrought on the squares, in order to so finish the label when desirable. The cards thus labeled are intended for use in firing friction matches."

I am informed that it is quite common to work designs of precisely this character, upon the back of abrasive paper or cloth but the question of novelty is not the one at issue, but rather that of identity. Is it a label, trade mark, or design, or should it be copy-righted?

As to the Simpson case 10 O.G. 333, one definition given by Webster of a label, is about what the Office regards as being

the proper matter to be registered as such. "A narrow slip of "silk, paper, parchment, &c., affixed to anything denoting its contents, ownership and the like, as the label of a bottle, or a "package." So far as this definition includes fanciful and arbitrary matter which may be used for the sole and independent purpose of a trade mark, to denote origin or ownership, it is not applicable to matter registered as labels.

Both registrable labels or prints, and trade marks are recognized by the terms of the law and the decisions of the courts, as being applicable alone to some kind of merchandise. Labels as giving the names of the manufacturers, place of manufacture, nature or quality of goods, directions for their use and the like; and a trade mark as some arbitrary symbol to distinguish the same from those goods of a similar character made by other persons.

The trade mark statute requires applicants to specify "the class of merchandise and the particular class of goods comprised in such class" to which the mark has been or is intended to be appropriated.

The section of the copy-right law relating to labels, provides - that no prints or labels to be used for "any other article of manufacture" than pictorial illustrations of works con-



nected with the fine arts shall be entered under the copy-right law but may be registered in the Patent Office.

And the penal Act of August 14, 1876, embracing within its terms both trade marks and labels, applies to the fraudulent affixing of them to goods, or packages containing the same.

The Courts have always sustained trade marks and labels on precisely the same principles, and they uniformly discuss these matters as having been affixed, in some way, to goods, as merchandise, and not as constituting the merchandise itself.

This was remarked by the learned Judge in the case of Moorman vs. Hoge, 2 Sawyer, 78 - in passing upon an alleged trade mark. He stated, that he had examined with care a large number of cases involving infringement of trade marks, including all the recent cases which he had been able to find bearing upon the question, and that he had found no case in which the use of an article or package containing it had been enjoined unless there was some symbol, word, letter or form impressed or affixed to the article, and which, considered separately from the article or package, was used as the trade mark.

This view of the law as also approved by the U. S. Circuit Court for the Southern District of New York, in the case of

Harrington vs. Libby 12 O.G. page 188.

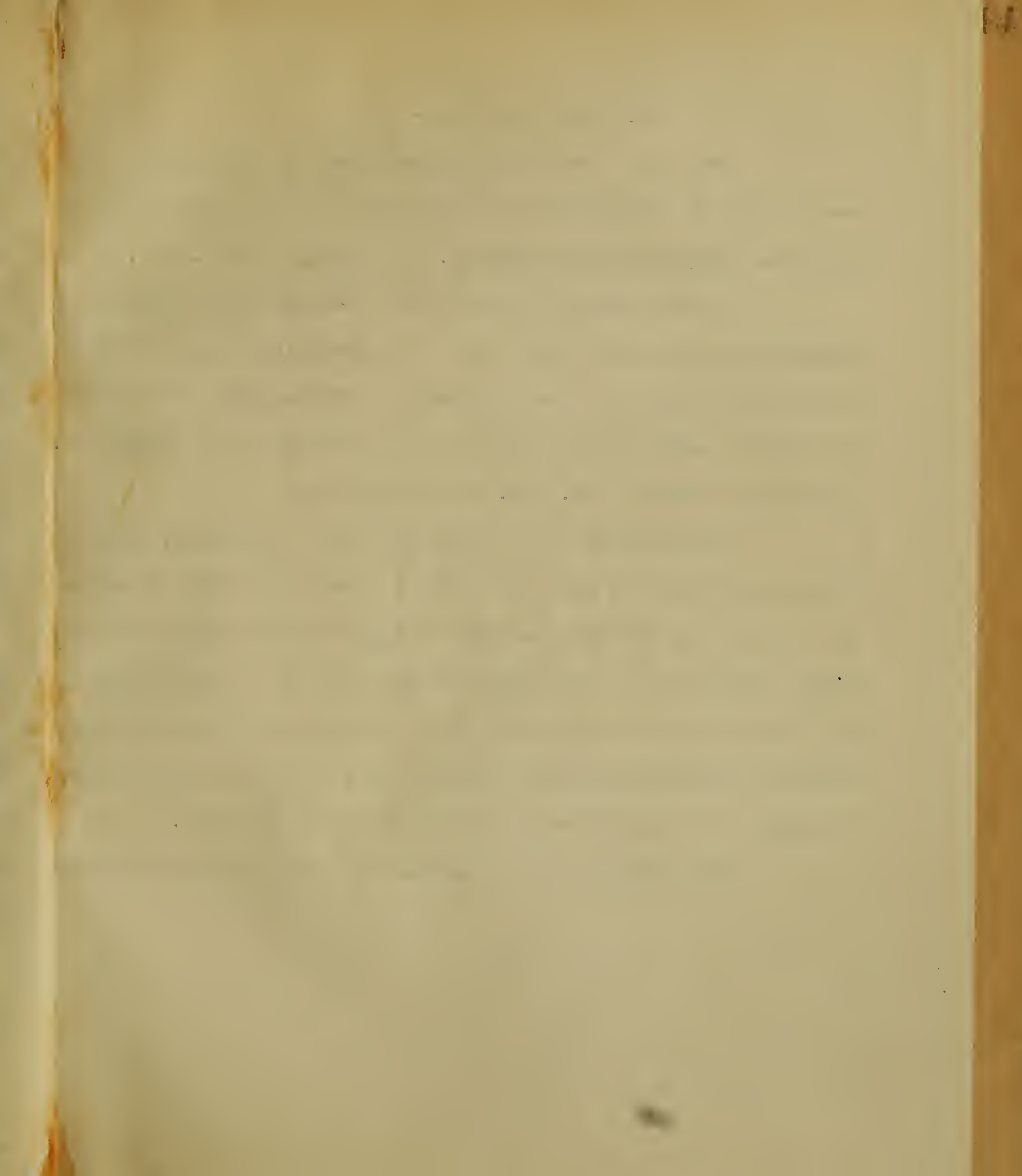
In the present instance then, the matter sought to be registered is not a label, print or a trade mark affixed to goods or merchandise, to denote ownership or the character of the goods and the like, but is the article itself - a fanciful pattern wrought into or upon the article - forming part of the article and giving to it a certain value by way of a new appearance, like a new pattern worked upon a slipper.

Neither it is designed to be published as a work of fine art, and therefore it is not the subject of copy-right.

We are now led to consider whether the design act applies to the case.

The law relating to designs, provides for the granting of patents to those who among other things have invented and produced "any new and original impression, ornament, pattern, print, or picture to be printed, painted, cast, or otherwise placed on or worked into any article of manufacture."

The Supreme Court has held that the object of this Act was to extend the protection of a patent to the ingenious producer of new and original appearances given to manufactured articles whereby their salable value was enhanced and the demand for them enlarged.



They add, that this appearance may be the result of the peculiarity of configuration or of ornament alone, or of both conjointly. Gorham Manufacturing Co. vs. White, 14 Wall., 511.

In view then of the fact that the matter in question is ornamental in character and is to be incorporated into the structure of the article, to be a permanent part thereof, I am of opinion that it comes within the terms and meaning of the design act. (See case of Whyte, Com. Dec. 1871, page 304.)

The subjects to be protected under the design, copyright label and trade mark acts are often so nearly the same in character, that it is difficult always to say, to which class they belong, especially in the absence of definitions in the statutes, but these provisions differ in some respects so widely that the Executive Departments must give them some positive interpretation to ensure an orderly administration of public business.

The decision of the Examiner of Trade Marks is affirmed.

New matter
JM

A P P L I C A T I O N
of
E L I A S B L O C K & C O.,

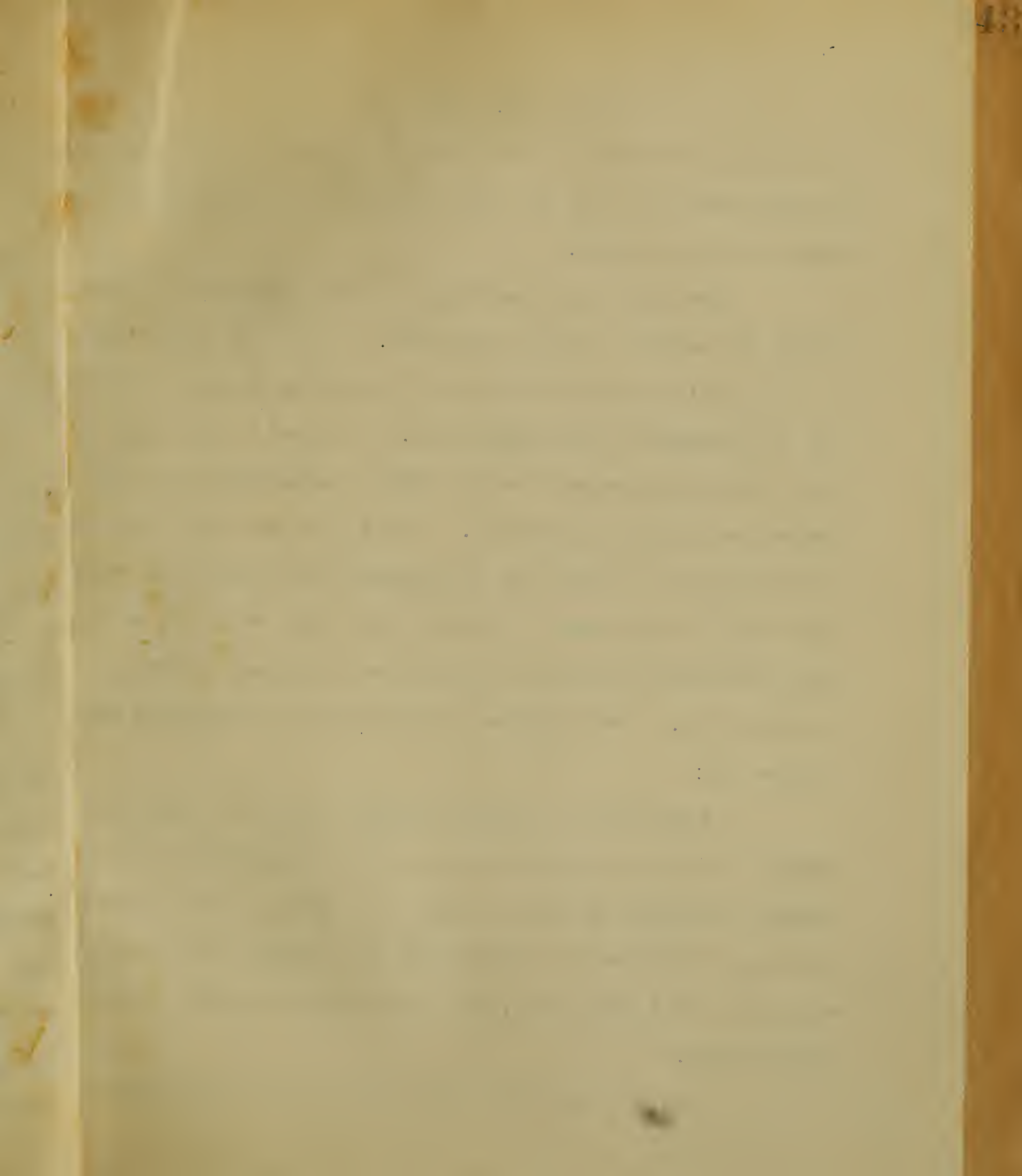
Decided Nov. 22, 1877.

Recorded Vol. 18, Page 147.

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SPEAR, COMMISSIONER:

It appears from the record that the applicants filed an application for registration of trade-mark, which registration was refused. They subsequently filed an amended application in which they submitted to what amounted to a new trade-mark, which appears to have been considered a lawful trade-mark, and essentially different from that filed in the original application. They made application to have this considered as an amendment of the original application which request was refused. The Commissioner then held that "the amendment of a proposed trade-mark in a matter material to its identity changes its character, and renders the "sworn statement required by section 4938 in-applicable. The effect is to ~~create~~ a "new trade mark". This is manifestly the case, for the new mark was considered a lawful trade-mark, whereas the old was admitted not to be such lawful trade-mark. The Commissioner held substantially that being a new trade-mark, an applica-



tion must be made for the registration of it, and a fee paid "in the same manner and for the same purpose as the fee required for "patents" Section 4939.

The manner and the purpose of the payment of the fee required for patents is well understood. It is not in the nature of a tax levied upon inventors, but is for the purpose of defraying the expenses of the examination. The fees in such cases are never refunded on account of any lack of patentability in the subject-matter of the application. A fee paid upon the filing of an application for a patent can be returned only when it is found that there was no requirement of law for such fee, as if the applicant had already paid the fee, or should pay in excess of what is required by law. The practice of the Office is distinctly stated in Rule 111:

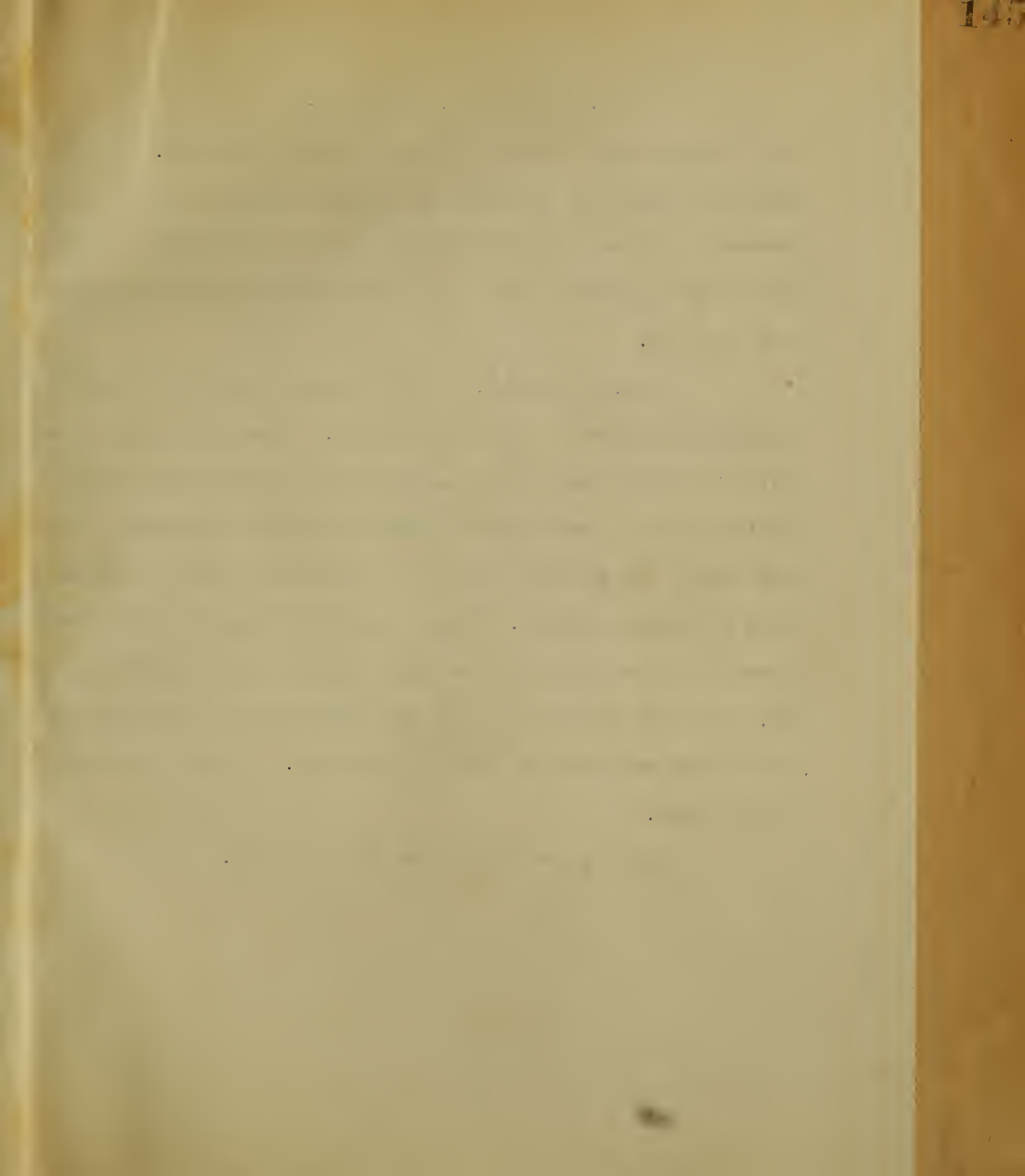
"Money paid by actual mistake, such as a payment in excess, or when not required by law, will be refunded, but a mere change of purpose after the payment of money, as when a party desiring to withdraw his application for a patent or for the registration of a trade mark, will not entitle a party to demand such return."

Fees in trade mark cases being paid in the same manner

and for the same purpose as the fee required for patents, it follows that they should be refunded only under the same circumstances. The fact that the Office refuses registration, or that applicant changes his purpose, and does not desire registration of the mark for which he made application or desires the registration of another mark is not enough to justify the Office under the law in returning a fee. Permission to amend the application so as to introduce into it a new trade mark is of precisely the same nature

I concur in the opinion of my predecessor, expressed in this case when it was before him on a former occasion, that such a practice would not be in strict accordance with the law, and would lead to confusion in the transaction of business. The amendment upon an application for trade mark, by the substitution of a new and lawful trade mark for that which was found not to be a lawful trade mark in the original application would amount, as I have said, to a return of the fee.

The question which applicants bring before me at this time is essentially the same question which they brought before the Commissioner on the former appeal. He refused to allow a new trade mark to be injected into the old application. Applicants filed a new application, and now they ask that the fee paid upon



the filing of the old application shall be refunded. It would have been precisely the same if they had asked to have it transferred to the new application, and that was precisely the same in substance as asking that the new application might be injected into the old.

I am, therefore, of opinion that there is no law for returning such fees in trade mark cases. That the labor of examining such application and determining that the mark which it presents is not a lawful trade mark is comparatively small, and that the fee is disproportionate to the labor involved in the examination is another matter. That complaint is against the law which prescribes the amount of the fee, and with that I have nothing to do. It is my duty to require the fees when applications are made, and to pay such moneys into the Treasury. I have no authority to return them.

The request of applicants is denied.

Label

A P P L I C A T I O N
of
M O E T & C H A N D O N,

Decided Nov. 27, 1877.

Recorded Vol. 18, Page 140.

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DOOLITTLE, ACTING COMMISSIONER:

The appellant is correct in his statement that the Courts in numerous decisions formerly recognized no difference between labels and trade marks. They were used as synonymous terms. But he is pleased to ignore the distinction established by the Act of June 18, 1874 as amendment to the copy~~r~~ight act. Previous to that time prints and labels which the Courts recognized as trade marks were copyrighted with the Librarian of Congress, or at a still earlier period by the U. S. District Courts, or where they were not thus recorded their owners sought protection for them on general equity principles based on long and uninterrupted usage. But the amendment of the copy-right law, alluded to, distinctly states, that prints and labels used on articles of manufacture other than those connected with the fine arts, and which are "not trade marks", shall be registered at the Patent Office - the registrant paying the fee of \$6. to cover a certified copy of the

record thereof.

It should be apparent to those having cognizance of this act, that it requires this Office to make some distinction between labels and trade marks; otherwise the fancy of the Office might lead it to charge \$25. one day for the registration of a label; and \$6. the next day for the registration of a trade mark, if as appellant now contends, there is no distinction recognized by the law between the same.

Of the present alleged trade mark the Examiner states, that the star and firm name, have been the subject of independent registration. The additional descriptive phrase "Sillery Mousseux Superieur", is now sought to be protected by regarding the whole matter as an entirety. But the applicant is unfortunate in reciting The Amoskeag Co. case, (Cox's Trade Mark Case page 87) as an illustration of a combined label and trade-mark sustained as an entirety. The only matter in that case which could be regarded as at all fanciful, were the letters, "A.C.A.", which were found to stand for Amoskeag Co. and A., quality, or best quality. These letters the Court refused to continue within the injunction, stating that they had acquired a settled meaning in the trade which other companies would have the same right to use as the plaintiffs

Following the doctrine in that case, the descriptive phrase of the applicant, above alluded to, must be refused registration as part of a trade mark, and then there remains nothing but matter which has been previously registered.

It may be added that the same matter which constitutes the trade mark in the Amoskeag Co. case, if now sought to be registered as such would be refused registration as a trade mark, but might be registered as a label, and this too without conflicting in the slightest degree with the doctrine of trade marks, as set forth by the Court and the equitable rights of owners thereof; although observing a distinction between a label and a trade mark which the Court did not then make, because the law has since established it.

The decision of the Examiner is affirmed.

_ A P P L I C A T I O N _
of
E M P I R E M I L L C O.,

Decided Dec. 8, 1877.

Recorded Vol. 18, Page 153.

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DOOLITTLE, ACTING COMMISSIONER:

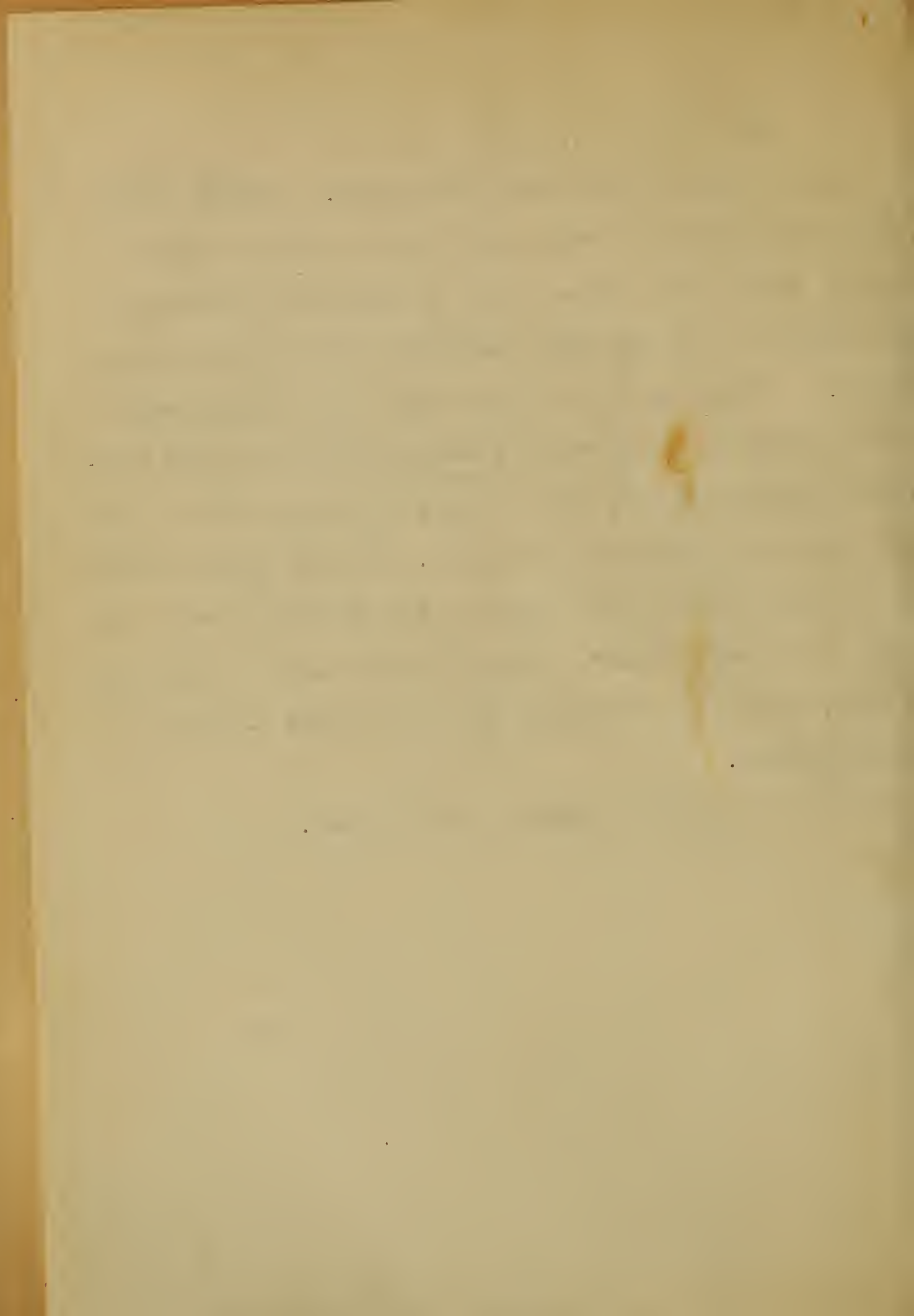
The trade mark sought to be registered, consists of the words "Fancy Snow White", applied to barrels containing flour, made under what is called "the new process", by the above named firm of St. Louis, Mo. Their entire mark, including the unessential as well as the essential features, consists as follows:- "196 Fancy Snow White New Process St. Louis, Mo."

The most objectionable parts of the matter are the words "Snow White". Now it is well known with this new process, that flour is made very white, or at least this is the natural supposition. The words mentioned are a common expression denoting, when applied to an article, that it is very white.

There are different designations of white, such as pearl white, &c. I fail to see how the word "fancy" affects the objection, the word "fancy" standing alone, if previously unapplied to flour, might be considered an arbitrary mark, but it does not add to, or

detract from the force of the term "snow white". Anybody making a very white flour has the common right to use words to express that quality, and if this common right is exercised it would be improper to give to the applicant exclusive control of the phrase in question. Persons using the words "snow white" in the same connection as used by applicant, and who should ^{omit} the word "fancy", might nevertheless lead other persons to believe that it was the same process and the same manufacture. If, as before remarked, there is any peculiar virtue added to this proposed trade mark by the use of the word "fancy", the application should be confined to that word, and if not previously applied to flour I think it might be registered.

The decision of the Examiner is affirmed.



Refund 771

A P P L I C A T I O N
of
C H A R L E S M A C E V O Y,

Decided Dec. 21, 1877.

Recorded Vol. 18, Page 172.

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DOOLITTLE, ACTING COMMISSIONER:

Applicant's definition of a trade ^{mark} may be correct abstractly, but "anything which distinguishes one thing from another" and which can be so nearly imitated as to deceive the public" comprehends a more extensive class of matters and things than the law has in view in referring to trade marks.

The trade marks which the statute contemplates may be registered are mentioned in Section 4957 Revised Statutes as marks appropriated to a "class of merchandise", or "a particular description of goods comprised in such class". A trade mark is what its name indicates - a mark used in trade, and its purpose is to denote the origin or ownership of the articles of trade to which it is attached.

The remedies provided under this statute for the fraudulent using of a trade mark, the penalties imposed, etc., have express reference to marks distinguishing goods and merchandise.

Perhaps a court of equity might afford relief to Mr. Mac Evoy of the "Hibernicon" exhibition against Mr. Mac Evoy of the "Hibernica" exhibition, on the ground of fraud in the misappropriation of a sign, advertisement, bill-head, or fanciful name of an exhibition, but this is a different matter than the infringement of a trade mark affixed to articles of trade.

The decision of the Examiner is affirmed.

A P P L I C A T I O N
of
C H A R L E S F. B A T E S,

Decided Dec. 24, 1877.

Endorsed on Examiner's Brief.

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DOOLITTLE, ACTING COMMISSIONER:

What are called Mineral Soaps are well known, composed partly of mineral or earthy substances for cleaning metallic ware etc., and very convenient for kitchen purposes.

In this case then, the words "Kitchen Mineral" are either discriptive or deceptive. Language descriptive of the qualities or use of an article, any one has a right to use, and no one can appropriate the same as a trade mark.

Neither has any one the right to use deceptive language, which under the guise of a trade mark might mislead the public as to the nature and quality of the goods to which it is appropriated

The decision of the Examiner of Trade Marks is affirmed.

A P P L I C A T I O N
of
S T. L O U I S B E E F C A N N I N G C O.

Decided Jan. 7, 1878.

Recorded Vol. 18, Page 183.

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DOOLITTLE, ACTING COMMISSIONER:

In those cases where it has been held that the symbols are objectionable on the ground that they are descriptive, the same were synonymous with the word for which they stood, and were intended to stand in place thereof. Thus, the figure of a fish applied to fish lines was just as appropriate as the word fish. So might the figure of a tomato, or an ear of corn upon canned tomatoes or canned corn. But here the essential feature of the mark being the figure of an ox applicable to canned meats of all descriptions, cannot be regarded as entirely descriptive. As to all other meats except beef, it certainly would not indicate quality; and as to canned beef itself the name of the animal represented by the figure would not be the commercial name of the article to which the symbol is attached. The consideration of the matter in this light gives rise at least to a doubt, which, I think should be given in favor of the applicant.

The decision of the Examiner of Trade Marks is reversed.

18

THE HISTORY OF THE CITY OF BOSTON FROM 1630 TO 1800

By JOHN H. COLEMAN

Author of "The History of the City of Boston"

Published by the Boston Public Library

1890

Copyright, 1890, by John H. Coleman

Printed by the Boston Public Library

1890

Published by the Boston Public Library

1890

Printed by the Boston Public Library

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Published by the Boston Public Library

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Published by the Boston Public Library

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Printed by the Boston Public Library

1890

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A P P L I C A T I O N
of
T. R O B E R T J E N K I N S & S O N

Decided Jan. 29, 1878.

Endorsed on Examiner's Brief.

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DOOLITTLE, ACTING COMMISSIONER:

The application ^{of} fails entirely to answer the objections urged by the Examiner of Trade Marks. The mark if registered in its present form would fail to denote its origin or ownership, and this is a sufficient objection without considering some others that the Examiner has urged with great propriety.

The decision is therefore affirmed.

"Jas Menroe & Son, Baltimore, Md."

A P P L I C A T I O N
of
M I L L E R J. R O G E R S,

Decided Feb. 6, 1878.

Recorded Vol. 18, Page 208.

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SPEAR, COMMISSIONER:

This case comes up on motion for rehearing on petition of the applicant. The words sought to be registered as a trade mark are "Rogers' Consumption Cure and Cough Lozenge", applied to a medical compound sold in the form of a lozenge. Registration was refused by the Examiner on the ground that the words were purely descriptive of the compound and used in their ordinary signification.

If the words are used in their common signification, unquestionably the law does not admit the appropriation of them to be made by any person, for the reason that on account of their general or common use, every individual in the community has an equal right to them. That the words are used in their common significance appears plain on inspection. They are not arbitrarily chosen, but appear to be intended to describe the quality of the article, and to convey to the mind of the purchaser the nature of

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the medicine, and the use for which it is intended. This being so, any person, on the principle laid down, would have the right to use the words, if he desired to make and sell an article of that kind.

There are many cases in which similar phrases have not been protected; "Wolf's Aromatic Schiedam Schnapps", 1859, N.Y. Sup. S.T., Wolfe v. Goulard; 1873, Sup. Ct., Cal., Burke v. Cassin
"Extract of Night Blooming Cereus"; 1864, Com. Pleas, Philadelphia, Pa., Phalon v. Wright. "Ferro-Phosphorated Elixir of Calisaya Bark". 1867, N.Y. Com. Pleas; 1874, N.Y. Ct. of Appeals, Caswell v. Davis.

Ayre's Cherry Pectoral" (medicine for coughs, colds &c.) 1877, N.Y. Com. Pleas, G.T. Ayer v. Rushton.

"Old London Dock Gin" 1865, N.Y. Com. Pleas, S.T., Binninger v. Wattles.

Upon careful review of the case therefore, I find no good ground for setting aside the former decision.

A P P L I C A T I O N
of
M O E T & C H A N D O N,

Decided March 12, 1878.

Recorded Vol. 18, Page 259.

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SPEAR, COMMISSIONER:

and traders.
The applicants, wine manufacturers, domiciled in the Republic of France, desire to register as a trade mark for a certain quality of champagne wine, "an allocation composed of the words and letters Sillery, Mouseux, Superieur above a representation of a five pointed star followed by the words Moet & Chandon, Epernay, in two horizontal lines." I understand that the entire allocation excepting the first words "Sillery, Mouseux Superieur" has already been registered as a trade mark to the applicants, so that it remains for me to consider whether these words of themselves are sufficiently distinctive to constitute a lawful trade mark under the statute. The applicants are citizens of France, and as such, by virtue of the trade-mark treaty with that country, and under section 4937 of the Revised Statutes, are privileged to register the distinctive marks used by them in the trade to designate their particular brands of goods. But before registration can be per-

1888

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fectcd in this country, the Commissioner of Patents must be satisfied, amongst other things, that the proposed device or symbol is of such character as entitles it to protection. He "shall not receive and record any proposed trade mark which is not and cannot become a lawful trade mark." In this connection it is well to state that by a "lawful trade mark," Congress meant such only as comes within the judicial sanction of the legal tribunals of the United States competent to deal with the subject. That the mark is a lawful one under the laws of the country where it originated is not test of its registrability in the United States. The treaty with France touching trade marks creates no exception to this well recognized principle of law, (Story Conflict of Laws, Sec. 32, et seq.,) nor does the statute on which the privilege of registration is based. If, then, the mark which applicants present is not a lawful one according to the principles laid down by the courts of this country, it cannot be registered.

Returning now to the words which are submitted for registration, we find that "Sillery" is the usual generic term expressive of a certain quality of champagne wine, and that "Mousseux, Superieur" are descriptive adjectives likewise indicative of grade or quality. Yet these terms taken together are the ones which

would naturally and necessarily be employed in defining the characteristics of the wine. They do not differ in this respect from the A.C.A. mark passed upon in the Amoskeag Manufacturing Co. vs. Spear, Cox's American Trade Mark Cases, p. 87, wherein the Judge says, "As the plaintiffs could not have acquired by their prior "occupation, an exclusive right in the use of the words 'First "Quality' or 'Superfine', they cannot have acquired a right by "similar means to an exclusive use of any letters, marks, or other "signs, which are merely a substitute for the words, and intended "to convey the same meaning.

" It is immaterial whether words, or letters, or figures, "or any other signs are used, if the single fact, which they are "used to indicate or declare, is a truth that other manufacturers "or dealers have an equal right to express and communicate."

Since then it was held in this leading case upon the subject that this portion of the mark in controversy could not lawfully be appropriated by any individual manufacturer, so too, in the present application, where the words are so clearly and truly descriptive of grade and quality, I fail to find in them legitimate subject-matter for a registrable trade-mark. Whether the applicants have or have not any standing under the amendatory



copyright act of June, 1874, it is not necessary to discuss. Certainly they have made out no case under the trade-mark statute, failing which, registration of the proposed mark must be denied.

The decision of the Examiner is affirmed.

"Plymouth"

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A P P L I C A T I O N
of
A R T H U R W A R D,

Decided March 22, 1878.

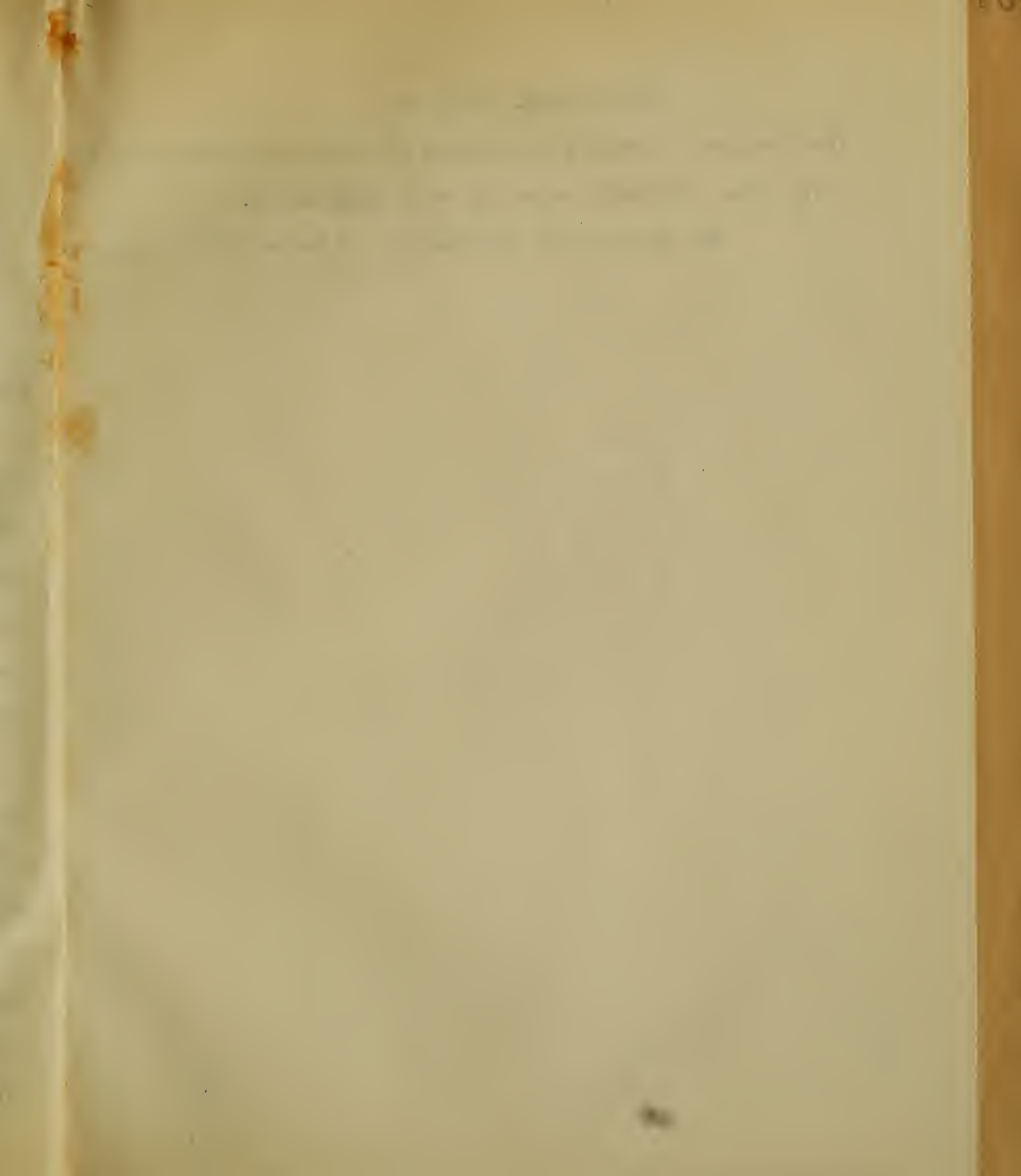
Endorsed on Examiner's Brief.

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DOOLITTLE, ACTING COMMISSIONER:

The affidavits in this case do not have the effect of showing that the alleged trade-mark was a lawful one rightfully in use prior to the act of 1870. They, on the other hand, show that the name of the place of manufacture was used on the goods there made a right exercised no doubt by others in the same place engaged in the same business, or which might have been then, and may now be so used.

What circumstances could have constituted a lawful trade mark prior to the act of 1870, must be gathered from the decisions of the courts, and the doctrine established in the matter of an appropriation of a name of a town as a trade mark to be applied to goods made in that town is thus stated by the U.S. Sup. Court 13 Wall, 311: "No one can apply the name of a district of country to a well known article of commerce, and obtain thereby such an exclusive right to the application as to prevent others inhabiting



Arthur Ward, Sheet -2-

the district or dealing in similar articles coming from the district from truthfully using the same designation.

The decision of the Examiner of Trade Marks is affirmed.

Coler

A P P L I C A T I O N
of
F I T Z P A T R I C K, D A V I S & C O.,

Decided March 25, 1878.

Recorded Vol. 18, Page 278.

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DOOLITTLE, ACTING COMMISSIONER:

In the first place I fail to see, how that part of the specification in which applicants state that they have used their trade mark for one and one-fourth years last past on canned salmon is inconsistent with the former part of the specification, where they state they have adopted for their use the trade mark for canned goods and packed and preserved goods, such as fish, meat, fruit and vegetables.

It simply amounts to this: They have used the trade mark on canned salmon, for the time mentioned. They now propose to extend its use to other canned goods. As to applying the trade mark to canned goods generally, it was thought originally that this was too broad an application, but upon further consideration, and in view of the previous practice of the Office, canned goods may be considered as a single class of merchandise, as it so appears to be regarded in the trade. The Commissioner concurs in this view

of the matter.

As to the requirements of the Examiner, that the present mounted fac simile be resigned by the witnesses, his attention is called to the fact, that by my order of Feb. 5th, 1878, a certified copy of the original application was allowed as the basis of the present application. This included of course the fac simile with witnesses names thereon. A certified copy of such fac simile can therefore now be used. As to the other informalities and irregularities in the caption referred to by the Examiner, he has not specified them, and I do not know what they are.

A P P L I C A T I O N
of
H. B E C K E R & C O . ,

Decided April 4, 1878.

Recorded Vol. 18, Page 296.

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SPEAR. COMMISSIONER:

Applicants seek to register the word symbol "Brandywine Mills", as a trade mark for flour, and have been rejected by the Examiner on certificate of registration, #784, granted A. Nones & Co., April 23, 1872, in which the word "Brandywine" occurs, as an essential portion of a trade mark distinctive of the same class of goods.

The Examiner takes the position that the word "Brandywine" is the characteristic one of the mark already registered, and that the word "mills" with which it is associated with by the applicants does not sufficiently discriminate the marks, and that as a consequence the resemblance is such as will "be likely to deceive the public" in purchasing flour in the market.

Applicants not only deny that the word "Brandywine" is in anywise the distinctive or characteristic one of the mark already registered, but also contend, that, even if it is, the allo-

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cation Brandywine Mills is so far different as to be entitled to a separate registration.

Without entering upon a discussion of these points, it occurs to me, that the subject may be disposed of upon an entirely different ground.

At Wilmington in the State of Delaware, there is a group of flour mills situated on the valley of the Brandywine, which have been actively engaged in the manufacture of flour, for the general trade, since early in the century. They are properly and accurately described as the Brandywine Mills, and are well known to the community under that name. The flour which they make would be strictly speaking, Brandywine Mills flour, and the right of the manufacturers to so distinguish it in the trade, cannot be seriously questioned.

The effort of the applicants to secure the registration of these words as a mark for their flour, if it does not result in a deception to the public, and thus within the objection in Newman vs. Alvord, 49 Barb. 588, is certainly within the language of Amoskeag Manufacturing Co., vs. Spear, 2nd Sand. S. C. 599. "The owner of an original trade mark x x x has no right to appropriate a sign or symbol which from the nature of the fact which it is

used to signify others may employ with equal truth, and therefore have an equal right to employ for the same purpose."

To the same effect are the cases of Brooklyn White Lead Co., vs. Masury, 25 Barb. 417; and Canal Co., vs. Clark, 13 Wall. 311.

Since the mark is not such a one as points to individual origin or ownership in the manner contemplated by law, registration must be refused, and the action of the Examiner is affirmed.

Classified

A P P L I C A T I O N
of
J A M E S E P P S & C O.,

Decided April 10, 1878.

Endorsed on Examiner's Brief.

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DOOLITTLE, ACTING COMMISSIONER:

I think Applicant may have his trade mark registered as applied to the class of "Manufactured Cocoa", but he cannot be allowed to include within that class to which his trade mark is to be applied "Manufactured hair oil" of which cocoa is but probably but a single ingredient, and I do not understand that he has attempted yet to do this. He recites as a matter of fact on what particular description of goods he has previously used this mark, but does not state in the language of the Statute "the particular description by which the trade-mark is intended to be appropriated". It appears from the specification originally filed that he has not only used this trade mark on hair oil, but on many more articles perhaps equally foreign to the general class.

If Applicant intends to hereafter use his trade mark on particular descriptions of goods alone comprised in the general class of manufactured cocoa, he should state that intention and

specify the goods, which should not be inconsistent with the general class. But if it is his intention to hereafter apply the trade mark to the whole class, it is not necessary he should specify any particular goods comprised in such class, the Statute, in my opinion, not requiring such special enumeration where the use of the mark is not to be accordingly limited.

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"Cream Colored Lace"

A P P L I C A T I O N
of
E M O R Y E. B A R N U M,

Decided April 10, 1878.

Recorded Vol. 18, Page 304.

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SPEAR, COMMISSIONER:

The Examiner held that the words which constitute the alleged trade mark were purely descriptive. While they have that appearance, I think in fact that they are not, but are arbitrarily chosen. They do not convey any definite idea to the mind, and appear to be mainly a fanciful alliteration. I am of the opinion, therefore, that the mark be registered.

A P P L I C A T I O N
of
B E C K M A N, N O B L E & C O.,

Decided April 11, 1878.

Recorded Vol. 18, Page 304.

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DOOLITTLE, ACTING COMMISSIONER:

Section 4939 prohibits the Commissioner of Patents from receiving a trade-mark for registration which has been already registered, or received for registration, or which so nearly resembles such last mentioned trade mark as to deceive the public.

The word "Puffer" which applicant wishes registered has been rejected upon the word "Puff" already registered and applied to cigars. It is a matter of judgment, but in view of the vast field from which arbitrary trade marks can be selected only limited by the powers of the imagination, it seems rather strange that this word should be selected, differing only from the previous registered word by the addition of a final syllable might be easily lost sight of by the public.

I am of opinion, after due consideration that the word which is now attempted to be registered does so clearly resemble the word previously registered and applied to the same article that it is quite likely to deceive the public, and therefore the decision of the Examiner of Trade Marks is affirmed.

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1883-1884

1885-1886

1887-1888

1889-1890

1891-1892

1893-1894

1895-1896

1897-1898

1899-1900

1901-1902

1903-1904

1905-1906

1907-1908

1909-1910

1911-1912

1913-1914

1915-1916

1917-1918

1919-1920

A P P L I C A T I O N
of
J. H E N R Y D W Y E R,

Decided April 18, 1878.

Endorsed on Examiner's Brief.

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SPEAR, COMMISSIONER:

It is admitted by the Examiner, that the specification conforms to the requirements of the Statute. This being the case it is not necessary that they agree strictly with the form given in the rules. These forms are for the convenience of the public and are not binding. Conformity to the Statute is sufficient. The specifications may be admitted.



form of box

A P P L I C A T I O N
of
S. J A C O B Y & C O.,

Decided May 9, 1878.

Recorded Vol. 18, Page 328.

-----oOo-----

DOOLITTLE, ACTING COMMISSIONER:

The applicant in his argument on appeal fails to remove the objection urged by the Examiner, that two upright strips a a applied to each end of the box containing the cigars forms an integral part of the structure, and is therefore not proper subject of a trade mark.

It makes no difference that cigar boxes hitherto have been constructed without these strips, or are complete for the purpose of holding cigars without them. The fact remains that after being applied they form just as much a part of the box as any other part of it, and are just as proper matter for a trade mark, and no more so, as the lid of the box, its bottom or sides, or the tacks that hold the parts together.

Being thus to all appearances simply a part of a box it does not possess the sole and independent office of a trade mark.

As set forth in the case of Gillott vs. Esterbrook,

47 Barb. 457, a peculiar form of box indicates workmanship, and is more the trade mark of the manufacturer of the box than of the trader who puts his goods therein.

That mechanical devices and structural characteristic of packages are not the proper subjects of a trade mark is a doctrine established by the cases of Gillott vs. Esterbrook, ante, Moorman vs. Hoge, 2 Sawyer 78, and Jacob Gordon 12 O.G. 517.

The central line b extending across the top and front of the box has no necessary connection with the strips, and the above remarks do not apply thereto.

The decision of the Examiner is affirmed.

L. J. M.

A P P L I C A T I O N
of
G E O R G E E M M E R S O N,

Decided May 11, 1878.

Recorded Vol. 18, Page 336.

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SPEAR, COMMISSIONER:

The Examiner holds that the word "Pellepocharm" must be registered, if at all, as a trade mark, and not as a label. An attempt has been made on the part of the applicant to show the word is not, as a matter of fact, a fanciful one, but in the true sense descriptive of the characteristics of the article which it is designed to distinguish in the trade. With no disposition to question the accuracy of his Greek, I am none the less satisfied that the word is strictly fanciful in its present application, and as such cannot be registered in a label under authority of the Simpson case recorded in 10 O.G. 333

The action of the Examiner in refusing to register the word as a portion of applicant's label is affirmed.

A P P L I C A T I O N
of
J A M E S C. K E R R,

Decided July 11, 1878.

Recorded Vol. 18, Page 427.

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DOOLITTLE, ACTING COMMISSIONER:

The applicant desires to register the words "System Renovator", as a distinctive mark for a certain medical compound, prepared by himself, and which it appears from the examination of the label containing the above mentioned distinguishing words, is intended to regulate "all disorders of the system, purifying the blood, removing skin diseases, strengthening weak lungs, &c." The objection to these words as a mark, lies in the fact, that they are not sufficiently arbitrary, or distinctive, to point out individual origin or ownership, in the sense contemplated by the Statute. They come within the language of the Court in Canal Co. vs. Clark, 13 Wall. 323, that "a generic name or a name merely descriptive of an article of trade, its qualities, ingredients, or characteristics cannot be employed as a trade mark", and of Judge Duer, in Amoskeag Manufacturing Co. vs. Spear, 2 Sand. S.C. 599, wherein speaking of the trade mark claimant, he says, "he has no

"right to appropriate a sign, or a symbol, which from the nature
"of the fact it is used to signify others may employ with equal
"truth and therefore have an equal right to employ for the same
"purpose."

Medical preparations designed to cure or eradicate the
same class of complaints enumerated by the applicant, are quite
common to the trade, and I am clearly of the opinion, that the
words which he presents for registration, would just as accurately
and just as certainly describe the characteristics or qualities of
these other preparations as of his own.

It would be a hardship, therefore, upon manufacturers of
these articles, and in derogation of their common law rights, if
the applicant were allowed the exclusive privilege of these de-
scriptive words as a trade symbol for his preparation.

Upon the authorities cited, the registration applied for
must be denied, and the action of the Examiner in refusing to is-
sue the certificate affirmed.

Class of Use

A P P L I C A T I O N
of
D I B B L E M A N U F A C T U R I N G C O.,

Decided July 12, 1878.

Recorded Vol. 18, Page 428.

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DOOLITTLE, ACTING COMMISSIONER:

The applicant desires to register the word "Hemacite", as a mark for a certain indurated blood compound, for which an application for letters patent is now pending before the Office. He also intended applying the same word to distinguish door knobs, panels, car trimmings, and various articles of ornament, when prepared from the above mentioned indurated compound, by a particular process set forth in letters patent already secured by applicant.

The Examiner insists that the applicant shall confine the use of the word in its office, as a distinctive mark either to the raw material itself, or to some one of the finished articles to be made from it.

From this requirement of the Examiner, applicant brings the present appeal. So far as it is intended that the word shall protectively distinguish the raw material before it is worked into form, as well as the finished articles into which it may be

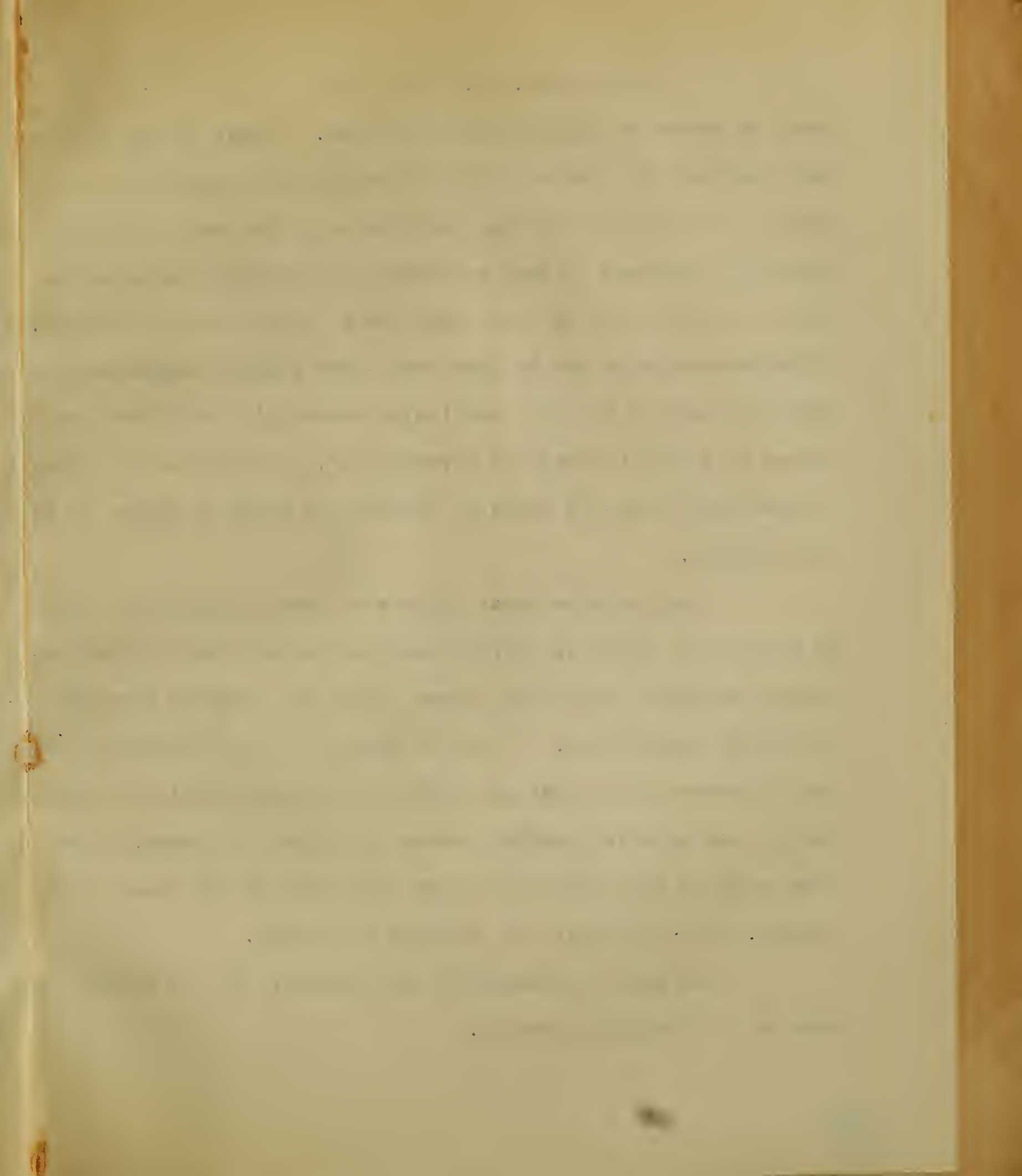


wrought, according to the process pursued, I am clearly of the opinion, that the action of the Examiner is correct, and that the crude material, after being subjected to the process treatment is so far different in its characteristics as to constitute an entirely different class of merchandise. Since the law contemplates that only one class of merchandise shall be protected by a single registration, the applicant must elect which one of the two classes indicated shall be retained in the case.

In event it is determined to abandon the mark in connection with the raw blood material, the further question presents itself, whether the ruling of the Examiner, that the symbol shall be still further confined to some one of the various articles enumerated in the specification is the correct one. Now the law requires that the applicant for a trade mark registration shall specify "the class of merchandise and the particular description "of goods comprised in such class by which the trade mark has been "or is intended to be appropriated."

It is not difficult to conceive of cases wherein the only satisfactory means of definitely and certainly specifying "the class of merchandise" it is proposed to protect, would be by a statement of the peculiar distinctive composition which enters

The first part of the paper is devoted to a general
 discussion of the problem. It is shown that the
 problem is of great importance in the theory of
 functions. The second part is devoted to a
 detailed study of the problem. It is shown that
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into, or serves to characterize the class. Thus, in the case in hand whatever the form or article into which the composition is molded, the finished material is invariably the same, and is undoubtedly possessed of just as marked distinguishing characteristics as are met with in factitious ivory, vulcanite or celluloid. Numberless articles can be made from these plastic compounds, yet after all each is but one "particular description of goods", comprised in a single "class of merchandise", the basis of the class in each case being the peculiar composition which is common to all the articles.

I am satisfied under this view that the applicant will be entitled to cover in a single application all the finished articles, whatever their form or use, which are prepared from the particular composition. I see no objection to the retention of the references to the letters patent and the application respecting the raw material and the process by which it is used, since they serve to more certainly point out precisely the class of merchandise the certificate is intended to protect.

The case is remanded to the Examiner for his action, in view of the foregoing remarks.

A P P L I C A T I O N
of
R O X B U R Y C A R P E T C O M P A N Y,

Decided July 13, 1878.

Recorded Vol. 18, Page 423.

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DOOLITTLE, ACTING COMMISSIONER:

I see no reason for refusing to register the mark applied for. It is a mistake to say, that it has no substantial limitation. That it is a line of color, running the length of the fabric, defines it very clearly to the mind, and both from the nature of the material it is designed to distinguish, and the manner of sale, it must be obvious that the particular way of applying the mark is the only one, that would certainly and fully identify the merchandise in the market.

The essence of the mark lies in its contrasting color. Whether, white, black, or gray, or anything else it matters not, so long as it is strikingly distinguishable from the body of the fabric, the carpet backing with which it is inwoven. When so distinguishable, it quickly attracts the eye, and thus by association serves to indicate origin or ownership.

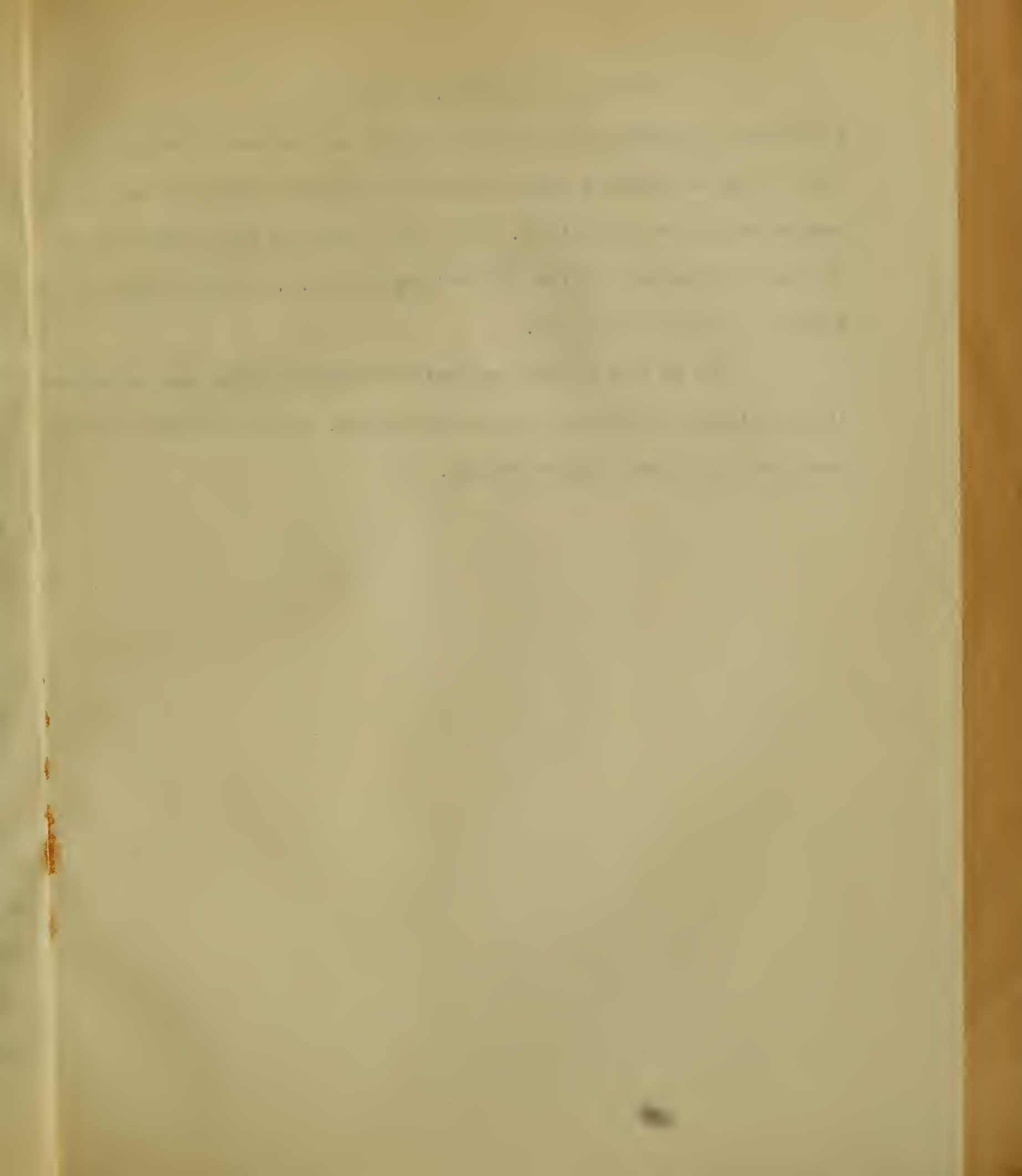
The mark being of the character stated, I should be un-

THE HISTORY OF THE
CITY OF BOSTON
FROM THE FIRST SETTLEMENT
TO THE PRESENT TIME

By SAMUEL JOHNSON, LL.D.
OF THE UNIVERSITY OF OXFORD.
IN TWO VOLUMES.
VOL. I.
LONDON: Printed by J. JOHNSON, in Pall-mall.
1790.

THE HISTORY OF THE CITY OF BOSTON, FROM THE FIRST SETTLEMENT TO THE PRESENT TIME, is a work of great interest and value, and one which has long been a desideratum to the public. It is a work which will be read with interest and pleasure by all who are interested in the history of the city, and who wish to know the origin and progress of the settlement, and the various events which have taken place since its first establishment. It is a work which will be found to contain a great deal of interesting and valuable information, and one which will be well worth the perusal of all who are interested in the history of the city.

The history of the city of Boston is a subject of great interest and importance, and one which has long been a desideratum to the public. It is a subject which has been the subject of many works, but none of which have been so complete and so interesting as this. It is a subject which will be read with interest and pleasure by all who are interested in the history of the city, and who wish to know the origin and progress of the settlement, and the various events which have taken place since its first establishment. It is a subject which will be found to contain a great deal of interesting and valuable information, and one which will be well worth the perusal of all who are interested in the history of the city.



willing to confine the applicant to any one color in making it when it is so obvious that the real arbitrary character would thus escape adequate protection. Nor need there be any limitation as to the particular portion of the backing, i.e. at what part of its width it is to be applied.

In so far as the objections appealed from are concerned the certificate may issue notwithstanding, and the action of the Examiner is accordingly reversed.

Print on back of playing card

A P P L I C A T I O N
of
P A P I E R F A B R I Q U E C O . ,

Decided July 18, 1878.

Recorded Vol. 18, Page 477.

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DOOLITTLE, ACTING COMMISSIONER:

The applicant desires to register as a print, what is shown by the fac similes accompanying the application papers to be a flower group enclosed in a floral border, "the whole forming the back of a playing card."

The Examiner insists, that the subject-matter does not properly constitute a print, but should be registered as a trade-mark, and from his ruling in this regard the present appeal is taken.

It must be remembered that the real essence of a trade-mark lies in the fact that the distinguishing word symbol or other device, which constitutes it, serves by peculiar association to distinguish the individual origin or ownership of the goods to which it is applied.

The sole and independent purpose of a trade-mark, as intimated in *Moorman vs. Hoge*, 2 Sawyer, p. 87, is to indentify the

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merchandise with which it is associated; and that if this limit is exceeded, if it is in fact an integral portion of the article, enters into its structure, in the course of manufacture, and increases by its presence (because of ~~its~~ ^{its} structural function it possesses,) the value of the article, then it can no longer be regarded as a mere arbitrary symbol chosen at the option of the manufacturer, but one whose presence is actually necessary to the completeness and marketable quality of the goods.

Moreover the mark must not only be of the arbitrary character indicated, but must be such a one as will be identified by the ordinary purchaser, associated by him with the special class of goods, and indicating by its presence their individual origin. (McLean vs. Fleming, 13 O.G. 913.)

Thus defined, I am quite clear the case in hand does not present subject-matter for trade-mark registration. The print is a component part of the complete playing card, adding by its presence to the ornamental appearance of the card, and from that very fact increasing its market value.

Moreover, whilst the ornamental figure might be sufficiently distinctive to the eye of a skilled designer, or to the wholesale dealer, accustomed to notice niceties in difference be-



tween the goods of various manufacturers, I doubt very much whether to the eye of an ordinary purchaser, using ordinary diligence in the selection of the articles, the mark would appear in such distinctive way as to enable the purchaser to identify the goods by it.

The action of the Examiner is consequently reversed. But can the subject-matter be registered as a print according to applicant's desire. If reference is made to Section 3 of the Amendatory act of June 18, 1874, which was the Act giving this Office authority to issue certificates for certain kinds of prints and labels, it will be found that the language of the section reads, "and no prints or labels designed to be used for any other articles of manufacture, shall be entered under the copy-right law, "but may be registered in the Patent Office."

From this statement it is inferred, that such prints or labels as are designed to be used for other articles of manufacture, may be so entered in the Patent Office; and unless they are so designed, it must be quite clear, that they do not come within the privilege of the section. In any given case, therefore, it becomes necessary to inquire, when a party desires to secure the benefits of this Act, whether the particular print, or label, is

designed to be used in connection with some other article of manufacture, and thus within the section or whether it is of and in itself an essential portion of the article, in no wise separable therefrom without diminishing the article's value.

The print which is asked to register is an essential component of a finished playing card, is not properly separable, or disassociated therefrom, and cannot, in any reasonable sense be said to be "designed to be used for any other article of manufacture." Failing in this requirement it cannot be entered under the Amendatory act referred to. If, however, attention be directed to Section 4929 Revised Statutes relating to designs, and remembering that in *Gorham Manufacturing Co., vs. White*, (14 Wall.) the court distinctly states the purpose of the design law to be to protect ornamental figures, prints, &c. I am quite sure that the application in question will be found to come within the provisions of this section, viz. "and new and original design for the printing "of woollen, silk, cotton, or other fabrics; any new and original "impression, ornament, patent, (pattern,) print, or picture to be "printed, painted, cast, or otherwise placed on or worked into any "article of manufacture." The ornamental design for the playing card back would seem to bear the same relation to the finished card, that the scrolls, floral and figured designs common to cali-

co printing, carpet weaving, etc., do to the market product upon which they are imprinted, or into which they are woven. In the strict language of the section, the ornament or print is one which is to be printed, painted, or otherwise placed on the article of manufacture; and since the sole end and purpose of the particular design is to give an ornamental finish to the card, I am quite clear it should be protected, if at all under the design law.

As the case stands upon appeal the decision of the Examiner is reversed. At the same time he is instructed to be guided in the further disposition of the case by the foregoing remarks.

After a careful consideration of the within argument I still adhere to my formerly expressed opinion that the matter is the proper subject for a design patent, and is not a proper trademark, nor a print or label. Nor does it possess the two fold quality of a print and design, that is a print to be placed upon other articles of manufacture, but it is part of the manufactured article itself. A part of each card just as much as the face of such card. If a patent for a design cannot be granted for this matter, it cannot receive protection at all from this Office.

The motion to rehear is denied.

Nov. 18, 1878.

The first part of the paper discusses the importance of maintaining accurate records of all transactions. It is essential for the business to have a clear and concise record of all income and expenses. This will allow the business to track its financial performance over time and identify areas for improvement. The second part of the paper discusses the importance of maintaining accurate records of all assets and liabilities. This will allow the business to track its net worth over time and identify areas for improvement. The third part of the paper discusses the importance of maintaining accurate records of all debts and obligations. This will allow the business to track its financial obligations over time and identify areas for improvement. The fourth part of the paper discusses the importance of maintaining accurate records of all taxes and other legal obligations. This will allow the business to track its financial obligations over time and identify areas for improvement. The fifth part of the paper discusses the importance of maintaining accurate records of all other financial information. This will allow the business to track its financial performance over time and identify areas for improvement.

A P P L I C A T I O N
of
A U G U S T U S W E I S M A N N & S O N,

Decided July 30, 1878.

Recorded Vol. 18, Page 456.

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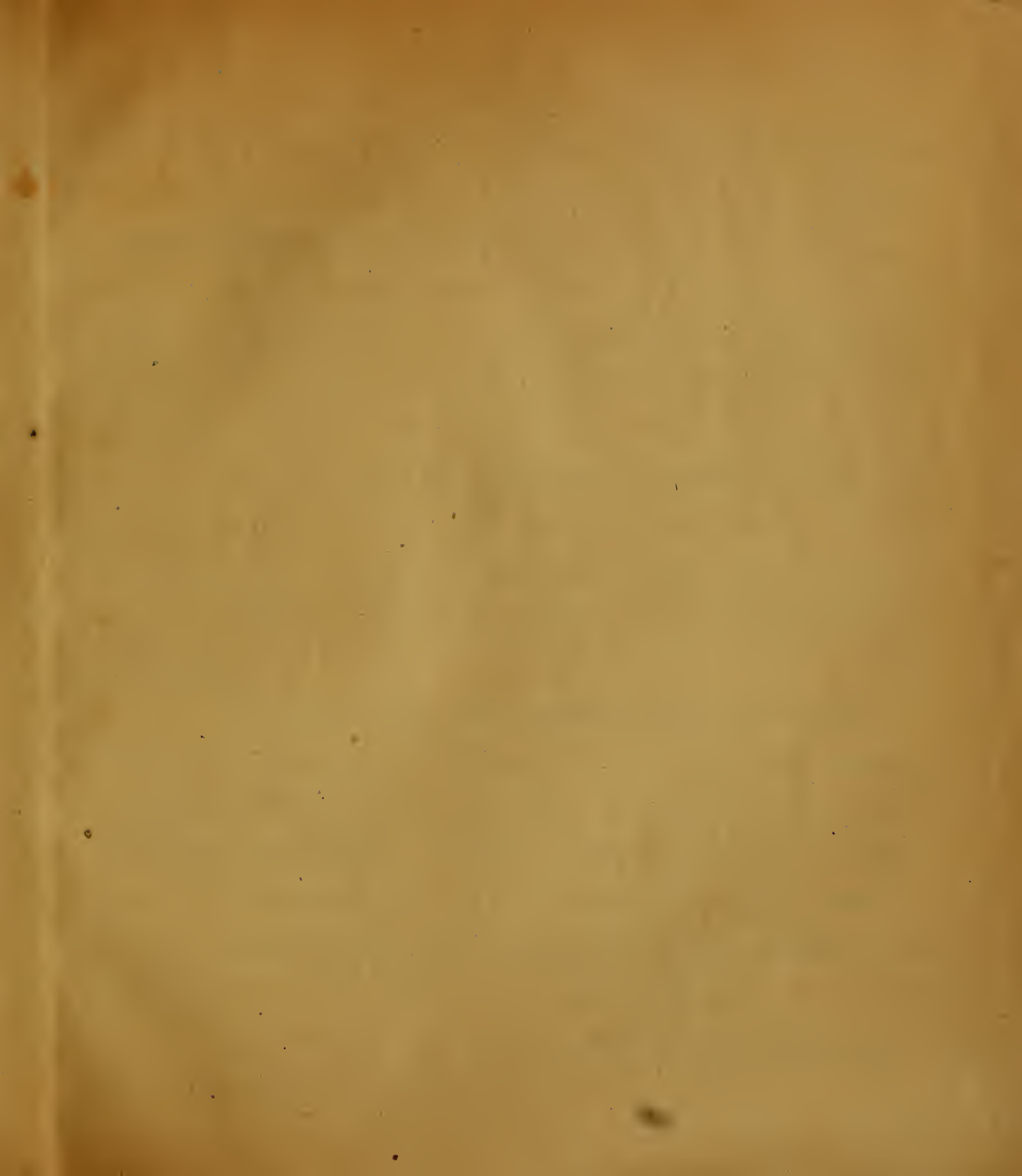
SPEAR, COMMISSIONER:

The applicants desire to register the word "Ansatz", as a mark for a certain medical compound, prepared by them, and popularly known as bitters.

The term, as originally presented, was "Bitterer Ansatz" but upon objections being made to the word "bitterer", as descriptive of quality, it was erased; a like objection is made to the remaining word "Ansatz", and the present appeal is taken from the action of the Examiner refusing to register it.

It is a common law doctrine, that words descriptive of the quality, characteristics &c., of the goods they are used to designate cannot become lawful trade-marks.

To allow an exclusive property in them would wrongfully fetter trade by preventing dealers in the same class of merchandise from employing those terms which from their nature most accurately describe the articles with which they are associated.



Section 4939 Revised Statutes, in permitting the registry of marks that had been in use prior to 1870, expressly confines its protection to "lawful trade marks rightfully in use" at that time.

If these words denoting quality, nature, &c., are presented for registration, it is of no importance that they were in use before the passage of the act of 1870, for they are not "lawful" marks, and do not become so by virtue of the act in question.

Under the title Ansatz (Deutsch-Englisches Worterbuch, Lucas, Bremen 1868. Vol. 1, p. 115) occurs perhaps amongst twenty other meanings of the word the following "(Pharm. Ansatz.) Ingredients, compounds", of which the singular would be, Ansatz, Ingredient, compound.

It is idle to say, that because the word has so many different significations and uses, that it is in any sense employed arbitrarily in the present instance. A cardinal rule of translation makes the context, the sense, govern the selection of the significant definition, so that in their English dress the words "Bitterer Ansatz" become Extra (comparative) Bitter Compound, which is sufficiently descriptive for all practical purposes.

The registration of the word must be denied and the action of the Examiner affirmed.

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A P P L I C A T I O N
of
B O W R I N G & A R C H I B A L D,

Decided Aug. 17, 1878.

Recorded Vol. 18, Page 492.

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SPEAR, COMMISSIONER:

The applicants desire to register the term "Electric Light" as a mark for refined petroleum. The substance of the Examiner's objection to this registration may be found in his statement, "that no symbol or designation is a lawful trade mark, unless it be truthful as well as not descriptive," truthful being used by him in the sense of opposed to deceptive.

A trade mark is addressed to the intelligence of an ordinary purchaser, buying with ordinary care. If any proposed mark is apt to deceive a person of this character, even though it may be a fanciful designation of the article to which it is applied, it cannot be registered.

The present case is on a par with "Rising Sun" Polish, and other exaggerated terms, conveying an idea of superior excellence, with a trace of untruth or inaccuracy in the association, and yet not deceiving anyone of ordinary intelligence.

The symbol may be admitted, and the Examiner's action is reversed.



A P P L I C A T I O N
of
F R E D K. H A N S C H I L D T,

Decided Aug. 27, 1878.

Endorsed on Examiner's Brief.

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SPEAR, COMMISSIONER:

That the word everlasting conveys the idea of superior durability in the particular connection proposed cannot be doubted. But it does this not because of any accurately descriptive use of the term, for human productions are not "everlasting", but because custom has assigned a certain significance to superlatives, exaggerated expressions, etc., when used in connection with articles of trade, and gathers the impression of excellence notwithstanding the words are employed in a purely fanciful, strained and oftentimes incorrect sense. It is the former and not the latter use of the word which the law refuses to protect.

The Examiner is reversed and registration will be allowed.

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Law *"Ecstasy"*

A P P L I C A T I O N
of
J. G. F O R M A N,

Decided Oct. 4, 1878.

Recorded Vol. 19, Page 55.

-----oOo-----

DOOLITTLE, ACTING COMMISSIONER:

"Ecstasis," according to the Latin Lexicon, is a feminine substantive signifying "a being beside one's self, ecstasy," so that an ecstasis medical compound would be one which produced a state of ecstasy in the individual taking it.

Distilled and fermented liquors are as much ecstasy compounds as the particular one of applicant; and, yet, it would be manifestly incorrect to say, that the single word, whether in its Greek, Latin, or English dress, would fully or in any satisfactory manner, describe either the ingredients, composition or physical effects of any of these preparations. If it does not do this then the word cannot be the proper subject of a label registration; for it is only when of this character that it can be thus protected under the statute.

The word ecstasis, (or ecstacine) is clearly a fanciful term in its particular association, and is nothing but an exagger-



ated trade designation which finds protection, if at all, as a trade mark. Under the established practice of the Office, it cannot be included as part of the label presented by applicant and he will, therefore, be required to expunge it before the certificate of registration can issue.

1. The first part of the paper is devoted to a general discussion of the problem of the existence of a solution of the system of equations (1) for arbitrary values of the parameters α and β . It is shown that the system has a solution for arbitrary values of the parameters α and β if and only if the condition $\alpha + \beta = 1$ is satisfied. In this case the solution is unique and is given by the formula

$$x = \frac{1}{\alpha + \beta} \left(\alpha x_1 + \beta x_2 \right)$$

where x_1 and x_2 are the solutions of the system of equations (1) for $\alpha = 1$ and $\beta = 0$ and for $\alpha = 0$ and $\beta = 1$ respectively.

Several elements in a 7/11

A P P L I C A T I O N
of

A. & M. L A N D O N,

Decided Oct. 8, 1878.

Recorded Vol. 19, Page 57.

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DOOLITTLE, ACTING COMMISSIONER:

In McLean vs. Fleming, 13 O.G., 913, a trade mark was sustained by the U. S. Supreme Court which was said to consist of two separate parts, viz: a red wax seal stamped with an inventor's name upon a box lid, and a surrounding (enveloping) label or wrapper containing certain devices.

In Freese & Co. vs. Baclof, 13 O.G., 635, the trade mark sustained by Judge Wheeler had five or six ⁱⁿ distinct elements; the form of the package, a pink wrapper, a crimson paper of directions, a yellow paper of warning, and two white labels, one upon each end of the package, and with certain imprinted matter thereon. All of these elements, by their long association in connection with the preparation of a particular article for the market, were held to constitute the mark upon which the purchaser relied in ascertaining individual origin, irrespective of the printed matter which the various papers contained.



In view of these cases, the fact that applicant's mark is to be found in part upon each of two separate papers, would not seem to impair its validity; certainly not at common law, and the statute is silent as to anything to the contrary. Notice, however, that where a mark is of this complicated character, (in several parts, or of several arbitrary devices,) it is the combination, the association of parts entire, and nothing less, which constitutes the mark, and which alone is protected by certificate. If another use something less than the complete assemblage of elements, no liability is incurred under the certificate, (Tucker Co. vs. Botington, 9 O.G., 455,) so that the registrant is concerned far more than the Office in the simple character of his mark.

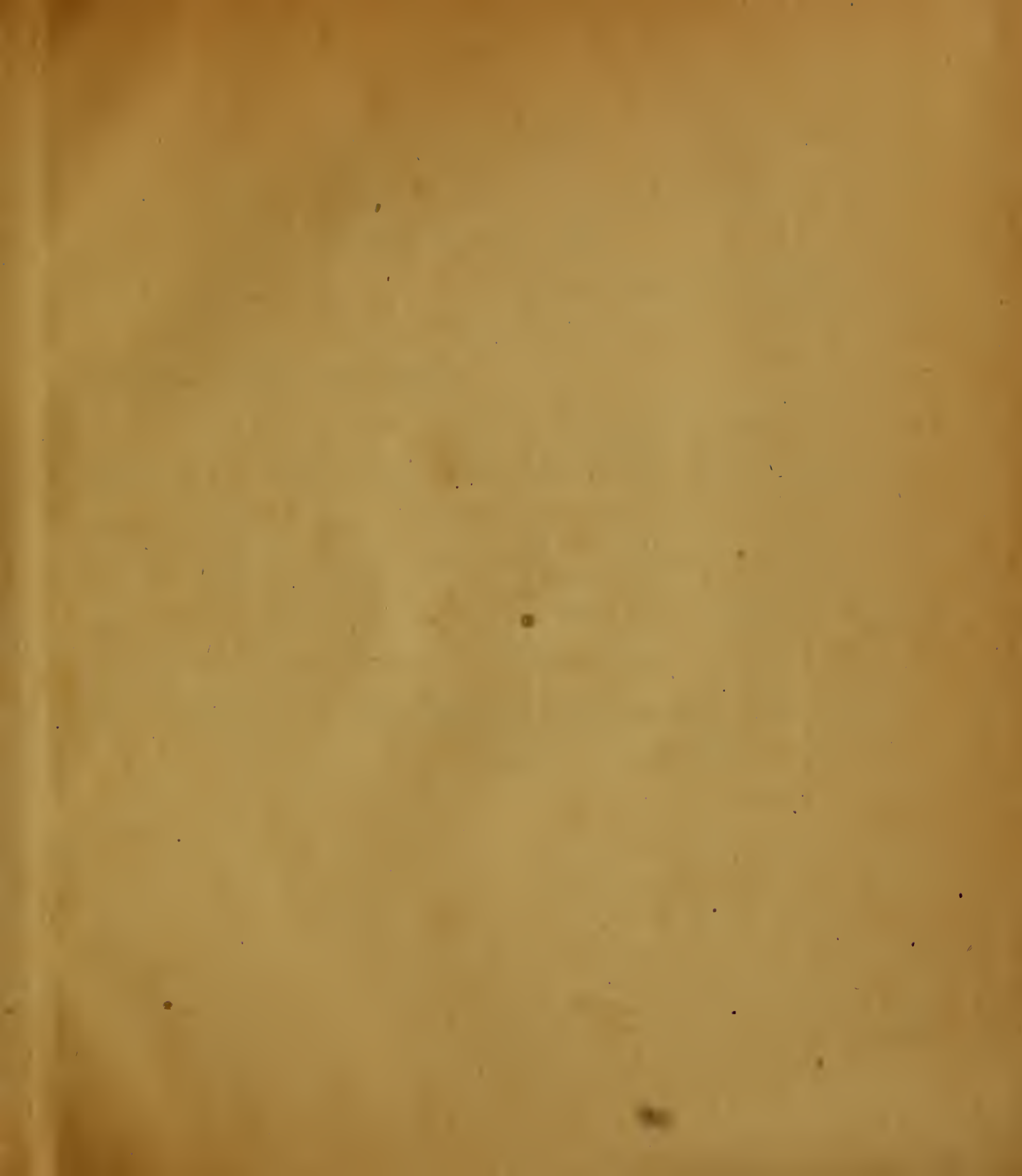
It is probable that in the particular case in hand the two separate labels have been used in common for a long number of years in distinguishing the article of trade to which they are applied. If either were omitted, some question would arise in the mind of the buyer as to the genuineness of the goods received were he accustomed to rely upon the double label in purchasing. Moreover if the applicant stated that either of the labels with its arbitrary matter were the mark he had used and intended to protect, (and this would be necessary under the statute in event he were

required to file a separate application for each symbol,) then it would be manifestly untrue in fact, for it is the association of all the distinct arbitrary elements which he has employed as a trade designation.

However confusing it may be in result to Office classification, it is not seen upon what authority marks of this complex nature can be excluded from the benefits of the act.

What is or is not the subject of applicant's mark is left with the Examiner at the present stage, for it resolves itself into the simple inquiry respecting arbitrary words or devices, and that inquiry belongs with him in the first instance.

Under the Simpson decision, (10 O.G., 333,) the applicant will be required to exclude all descriptive matter, and to confine his marks to those arbitrary characters, which by their association distinguish his goods.



A P P L I C A T I O N
of
C O V E R T M A N U F A C T U R I N G C O . ,

Decided Oct. 17, 1878.

Recorded Vol. 19, Page 63.

-----oOo-----

DOOLITTLE, ACTING COMMISSIONER:

In this case the words "Covert Snap" are sought to be registered as a trade mark. The snap in question was patented Feb. 25, 1868 and Sept. 30, 1873. The application is made by James C. Covert in behalf of the "Covert Manufacturing Company". It is the proper name of the article, and neither under the common law, nor under the statute is it proper matter for registration. See the case of the Consolidated Fruit Jar Company, 14 O.G., 269.

The decision of the Examiner of Trade Marks is affirmed.

THE HISTORY OF THE CITY OF BOSTON

FROM THE FOUNDATION OF THE CITY
TO THE PRESENT TIME

BY SAMUEL JOHNSON, ESQ.

IN TWO VOLUMES.

LONDON: Printed by J. JOHNSON, in Pall-mall.

MDCCLXXXIII.

THE HISTORY OF THE CITY OF BOSTON

FROM THE FOUNDATION OF THE CITY
TO THE PRESENT TIME

BY SAMUEL JOHNSON, ESQ.

IN TWO VOLUMES.

LONDON: Printed by J. JOHNSON, in Pall-mall.

MDCCLXXXIII.

Prize Medal

A P P L I C A T I O N
of
D A V I D S. B R O W N & C O.,

Decided Oct. 29, 1878.

Recorded Vol. 19, Page 68.

-----oOo-----

DOOLITTLE, ACTING COMMISSIONER:

"Prize Medal" soap in any ordinary and usual acceptation is such soap as has obtained a prize medal for some supposed excellence or superiority. It is manifest that all manufacturers who have at any time obtained prize medals for their soap products are entitled to denominate such soaps "Prize Medal" soaps. If the article made by the present applicants has at any time thus distinguished, the term "Prize Medal" soap is properly descriptive of its character. If their soaps have not won any such distinction, then the use of the term "Prize Medal" is false in its suggestion, and tends to deceive the public by its use.

A parallel trade term, "Premium Tickings" was discussed by the Court in Amoskeag Co. vs. Spear, Cox's Trade Mark Cases, ⁸⁷ and met with emphatic condemnation. *(Cin. C. 1871)*

It is not seen in what essential the present term differs in principle from the one therein discussed. It is either descriptive or deceptive, and in either point of view is without right to protection.

Registration is refused and the action of the Examiner affirmed.

THE HISTORY OF THE CITY OF BOSTON

FROM THE FOUNDATION OF THE CITY
TO THE PRESENT TIME

BY NATHANIEL BENTLEY

IN TWO VOLUMES.

VOLUME THE SECOND.

NEW-YORK: PUBLISHED BY J. B. BENTLEY.

1825.

PRINTED BY J. B. BENTLEY.

NEW-YORK: PUBLISHED BY J. B. BENTLEY.

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PRINTED BY J. B. BENTLEY.

NEW-YORK: PUBLISHED BY J. B. BENTLEY.

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NEW-YORK: PUBLISHED BY J. B. BENTLEY.

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NEW-YORK: PUBLISHED BY J. B. BENTLEY.

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PRINTED BY J. B. BENTLEY.

NEW-YORK: PUBLISHED BY J. B. BENTLEY.

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Gold Prize

A P P L I C A T I O N
of
D A V I D S. B R O W N & C O.,

Decided Oct. 31, 1878.

Endorsed on Examiner's Brief.

-----oOo-----

DOOLITTLE, ACTING COMMISSIONER:

It is not necessary to review the various objections urged by the Examiner of Trade-Marks, however~~/~~ sound they may be: The vital objection, in my opinion, is this: The words "Gold Prize" are either descriptive or deceptive: To me, and I believe to the public generally, they would indicate that a gold prize had been given to the manufacturer of this article, and its value to my mind would be enhanced thereby. If no prize had been obtained^a the words are deceptive. In either case they are not the proper subject of a Trade Mark. The decision of the Examiner is affirmed.



A P P L I C A T I O N
of
D. S. B R O W N & C O.,

Decided Oct. 31, 1878.

Recorded Vol. 19, Page 69.

-----oOo-----

DOOLITTLE, ACTING COMMISSIONER:

With the whole range of arbitrary words and symbols to choose from, it is incomprehensible that the applicants should insist upon the registration of a phrase or sentence, which either informs the public of a fact in relation to the goods associated, or else misleads.

It is no uncommon thing for dealers to insert coin or articles of value in the merchandise they offer to the public, and from the Office records, it appears that these very applicants have so planned to prepare soap for the trade. To attach the information "there's money in it" to the soap bars, either states a truth, or else it deceives. The law was not intended to foster any such doubtful practices, and the registration is accordingly denied.

Examiner affirmed.

A P P L I C A T I O N
of
S. H E R N S H E I M & B R O.,

Decided Nov. 13, 1878.

Recorded Vol. 19, Page 95.

-----oOo-----

DOOLITTLE, ACTING COMMISSIONER:

Applicants' fac simile contains the words "Little Brown Jug," but in his statement he alleges that the trade mark consists of the arbitrary word "Jug", to be ^{used} usually in connection with the words "Little Brown", but that the words "Little Brown" may be omitted, or other words substituted therefor without changing the trade mark.

I agree with the Examiner, that looking to the fac simile alone the public would naturally infer that the whole phrase constituted the trade mark.

But, in my opinion, the law gives to the statement and the accompanying declaration, the office of defining and limiting the trade mark, and the public must resort to them, just as in patent cases the specification and claims must be consulted to learn the extent of the invention claimed, although the drawing may show the invention in connection with matter not claimed, for





for the purpose of illustrating the mode of application.

Section 4937, Revised Statutes appears to expressly require, that the fac simile shall show the mode in which a trade mark has been, or is intended to be applied and used.

My conclusion, therefore is, that it is opposed to such requirement to confine a fac simile to the precise word, or symbol, constituting the essential trade mark; but, that the fac simile may show the usual way (not many or all ways, however,) in which the trade mark is applied in connection with other matter.

The decision of the Examiner of Trade Marks is reversed.

Alternative form

A P P L I C A T I O N
of
A M E R I C A N M A C H I N E C O . ,

Decided Nov. 16, 1878.

Recorded Vol. 19, Page 101.

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DOOLITTLE, ACTING COMMISSIONER:

In this case I am of the opinion, that the figure of the crown and the word, crown, are equivalents. If there had been any other form of a crown registered upon domestic hardware objection might be properly made to the registration of the figure and the word in the present case, if the two were not distinguished by some peculiar characteristic which would prevent the misleading of the public. I fail to see what other term can more properly be applied to the figure in this case than the word crown. True there are different kinds of crowns, and if a species, with its particular name, such as coronet, and varying in shape and appearance from the present crown were used on the same class of goods, no interference therewith, I apprehend, would exist.

The Examiner well says, there cannot be a generic claim in the registry of a trade mark. So there is no harm in permitting the use as a trade mark of a generic term, or a generic symbol, so

long as the term of a species of that class, or the characteristics of the same, are sufficiently distinctive to prevent confusion and deception when applied to the same goods.

Has the mark such qualities as will distinguish it from another mark when used on the same class of goods, is the true question in such cases, without regard to the fact of its being a generic or specific term. The decision in the case of Weaver 10 O.G., 1, governs the present application.

The action of the Examiner is reversed.

A P P L I C A T I O N
of
G O O D W I N & C O.

Decided Nov. 23, 1878.

Recorded Vol. 19, Page 112.

-----oOo-----

DOOLITTLE, ACTING COMMISSIONER:

In this case the trade mark sought to be registered is described as consisting "essentially of a single dark strip or band of substantially uniform width, as shown in the fac simile, extending along the side of a white or light colored package from end to end." The strip is further described, as being sufficiently darker than the general surface of the package to contrast strongly with it.

Registration of this mark must be denied on two grounds:

First, That the proposed mark as shown in the fac simile, is substantially made the subject in a claim of a patent granted to G. C. Emery, #206,668, August 6, 1878.

The first claim in that patent is for a "sidestrip of paper or other similar material, pasted or gummed to extend from top to bottom, and connect with a free flap over the top, and a flap gummed over the tuck in the bottom", as set forth in the fac simile filed herewith.



That which has been made the subject of a patent, cannot be registered as a trade mark, for the reason that it is a part of the consideration for which the Government grants a patent that at its expiration the matter therein claimed, shall become the property of the public.

A trade mark under the law, remains in force for thirty years; and to permit the same to be protected so as to give its exclusive use to a patentee long after his patent has expired, would be a fraud upon the public. The Consolidated Fruit Jar Co. (14 O.G. 269.)

Second, The matter described and illustrated performs something more than the mere function of a trade mark, viz: that of an ornamental appendage, and also the mechanical function of a sealing strip. The sole and independent quality of a trade mark, which is simply to distinguish the goods of one manufacturer from the same goods made by another, is thus impaired. Jacob Gordon (12 O. G. 517.)

I do not mean to hold herein, that a trade mark is objectionable on account of its being ornamental, but whether ornamental or not, it must be clear that it is not used as matter of ornamentation alone, but that it has as above stated, the independent and sole quality of a trade mark.

The decision of the Examiner of Trade Marks is affirmed.

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A P P L I C A T I O N
of
H E N R Y S E A R S & C O.,

Decided Dec. 5, 1878.

Recorded Vol. 19, Page 129.

-----oOo-----

DOOLITTLE, ACTING COMMISSIONER:

In this case applicant seeks to register as a trade mark the word "Queen," arranged as shown in his accompanying fac similes. The fac similes show that word in skeleton gold letters and printed upon the blades of razors.

The application has been rejected upon the reference to the registered case of N. Joseph, September 4th, 1877, which covers the words "Queen's Own", for the same article of cutlery.

I find by the sworn statements and declarations of the respective parties, that the trade mark of applicant has been in use for about eight years, while that of Joseph had been in use for only four years prior to 1877.

The following distinctions are alleged to exist between the present mark and the reference; first, different meaning; second, different form, third, different words. The words "Queen's Own," is the proper appellation of a well known English regiment.

The words are stamped differently upon the blade of a razor, and are distinguished from the word "queen", by the addition of an apostrophe, and the word "own". Also the essential part of applicant's mark, is the skeleton gold letters in which it is printed. These distinctions, and the fact of long prior use sworn to by the applicant, are sufficient, in my judgment, to prevent the deception of purchasers using ordinary caution.

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LIBRARY OF THE UNIVERSITY OF CHICAGO

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A P P L I C A T I O N
of
W. T. C O L E M A N & C O.,

May 2
Decided April 12, 1879.

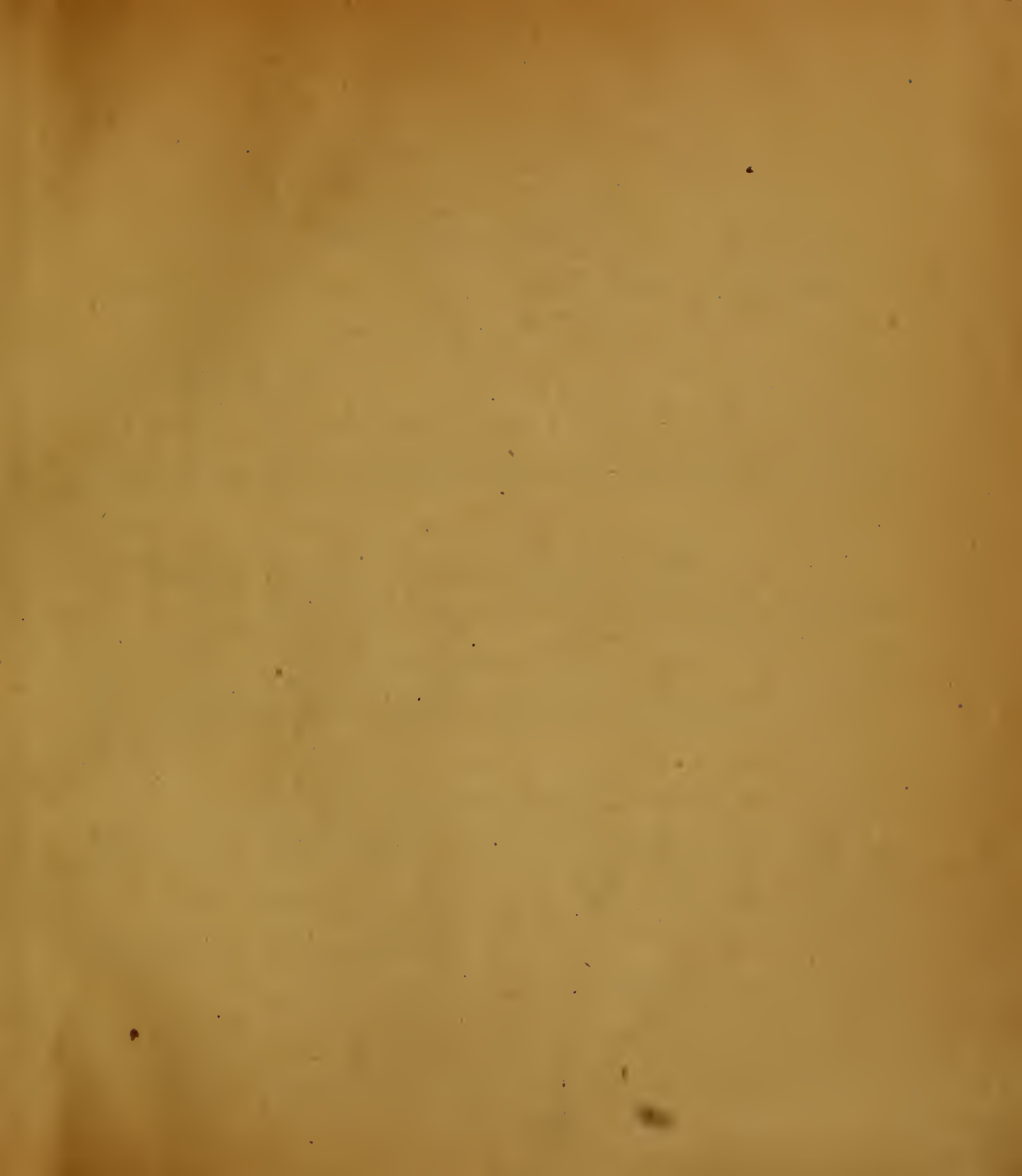
Endorsed on Examiner's Brief.

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DOOLITTLE, ACTING COMMISSIONER:

The term "Electric light" applied to the candle of applicant is ^{aa}entirely fanciful and arbitrary as if applied to a common tallow candle, in my opinion, and for that reason is neither descriptive nor deceptive. It is just as appropriate to this class of goods as the words "Rising Sun" is appropriate to stove polish, indicating a quality in a highly fanciful manner.

The decision of the Examiner of Trade Marks is reversed.



Label

A P P L I C A T I O N
of
H O W A R D & B U L W A R E,

Decided April 12, 1879.

Recorded Vol. 19, Page 363.

-----ooo-----

PAINE, COMMISSIONER:

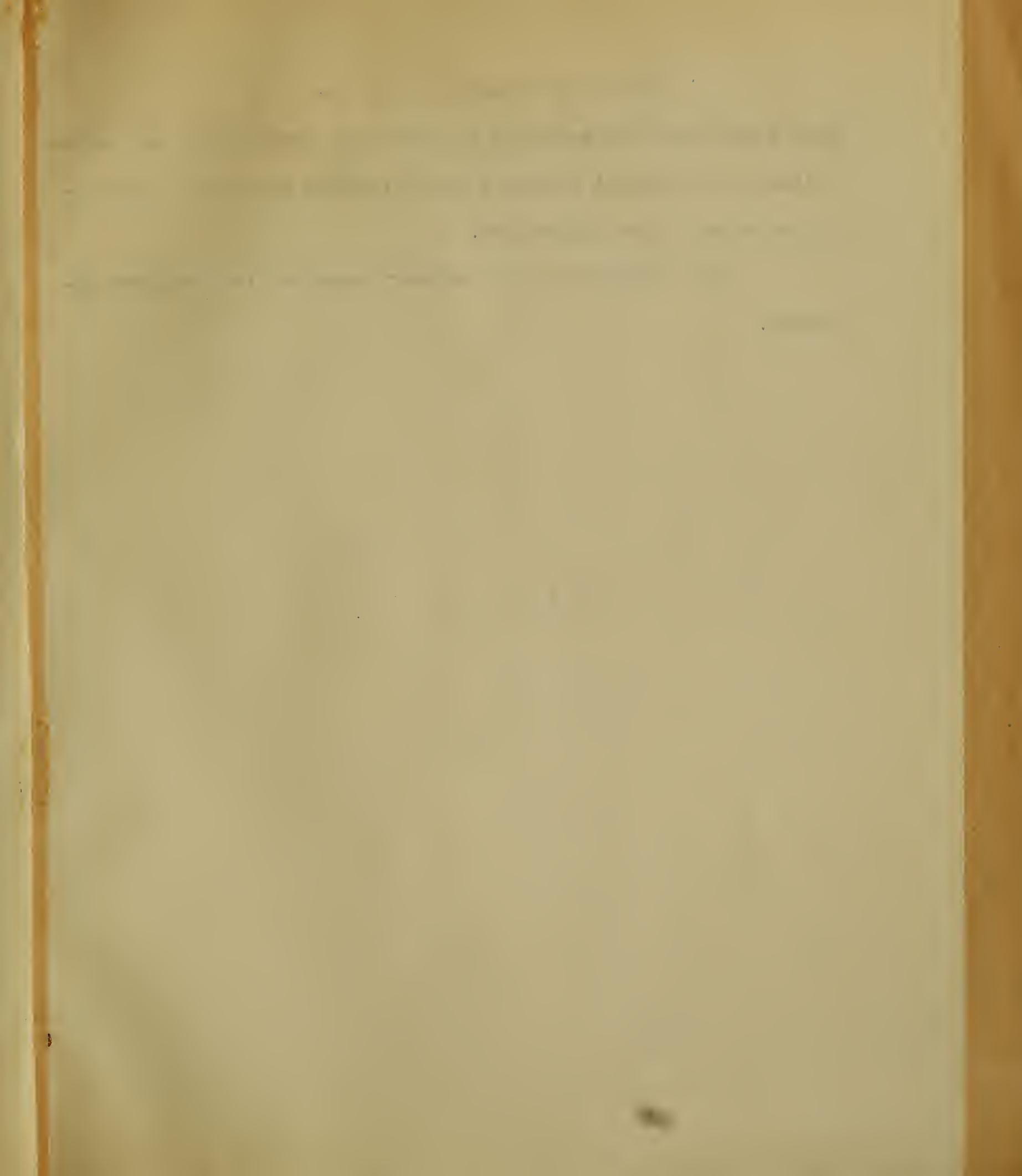
The applicants whose place of business is in the State of Kansas, present for registration a label which has the following title:-

"HOWARD'S CALIFORNIA MAGIC SUN STROKE LINIMENT"

The primary examiner refuses registration on the ground that the words "California Magic", included in this title are fanciful in their signification and therefore only registrable in a trade mark.

The applicant's attorney suggests, that the word "California", here means "golden", referring probably to the color of the liniment, and that the word "magic" means, that the action of the liniment is instantaneous.

I do not think that these words would of themselves ordinarily convey such meanings. The significations given by the applicant's attorney to the words seem to me to be not the ordi-



nary significations conveyed by the words themselves, but extraordinary or fanciful meanings which require additional explanations to make them understood.

The decision of the primary examiner is therefore affirmed.



A P P L I C A T I O N
of
J A C K S O N R I L E Y,

Decided April 19, 1879.

Recorded Vol. 19, Page 383.

-----oOo-----

PAINE, COMMISSIONER:

Riley applies for the registration of the term "Soft Mash," as a trade mark for whiskies. The primary examiner rejects the application on the ground, that the term when applied to whiskies, is ~~deceptive~~ *descriptive*. I concur in this conclusion, and for substantially the same reasons which he sets forth in his answer to the appeal.

The decision of the primary examiner is affirmed.

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THE UNIVERSITY OF CHICAGO

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A P P L I C A T I O N
of
F R A N C I S F. B R A I L L A R D,

Decided May 1, 1872.

Recorded Vol. 19, Page 324.

----- --ooo-----

DOOLITTLE, ACTING COMMISSIONER:

Applicant's trade mark consists of the figure of a sphinx and the letters "S. R. L." applied to a liniment manufactured by him. Registration is denied him by the Examiner in reference to registered trade mark #4002, the same being the figure of a sphinx applied ^{to} "Bitters and other Medicinal Preparations."

A liniment may be a medicinal preparation, but I think it is not an unfair inference from the language used in that case that registration intended to refer only to medicinal preparations similar to that of bitters. However, that may be, I am of the opinion that the letters "S.R.L.", which constitute an essential part of applicant's mark will distinguish his goods from those of registrant sufficiently to prevent deception on the part of the public.

Examiner reversed.



A P P L I C A T I O N
of
C A R B O N P A I N T C O.,

Decided May 2, 1879.

Endorsed on Examiner's Brief.

-----ooo-----

DOOLITTLE, ACTING.COMMISSIONER:

Carbon being a well known ingredient for paints, the
term is descriptive, and therefore not a proper trade mark.

The decision of the Examiner of Trade Marks is affirmed.

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CHICAGO, ILL.

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PHILIPPS EXETER ACADEMY

CHICAGO, ILL.

THE HISTORY OF THE

1776

The first part of the history of the
American Revolution is the story of the
struggle for independence. It begins with the
colonies' resistance to British taxation and
ends with the signing of the Declaration of
Independence in 1776. The second part of the
history is the story of the war itself. It
begins with the Battle of the Clouds in 1776
and ends with the British evacuation of New
York City in 1783. The third part of the
history is the story of the peace negotiations
which led to the signing of the Treaty of
Paris in 1783. The fourth part of the
history is the story of the years following the
war, when the new nation was struggling to
establish a government and a constitution.

Prints

S P E C I A L O R D E R.
of

Ex. B. 1111

May 19, 1879.

Hereafter you will please formally reject all applications for the registration of prints, the titles of which consist simply of fanciful names or words arbitrarily selected by printers, and which are not designed to be used on articles of trade by the applicant, until the Commissioner can in a proper case determine the validity of such practice.

As illustrating what I have in mind I refer to the titles "Col. Dwight," and "La Jeunesse," in the Official Gazette for May 6, 1879.

You will also hereafter, in preparing the list of labels and prints for publication in the Official Gazette, please designate the character of the article on which the label is to be used if the title does not sufficiently disclose it.

DOOLITTLE, ACTING COMMISSIONER:



A P P L I C A T I O N
of
S C H O E T T K E R & G E H R I N G,

Decided May 22, 1879.

Endorsed on Examiner's Brief.

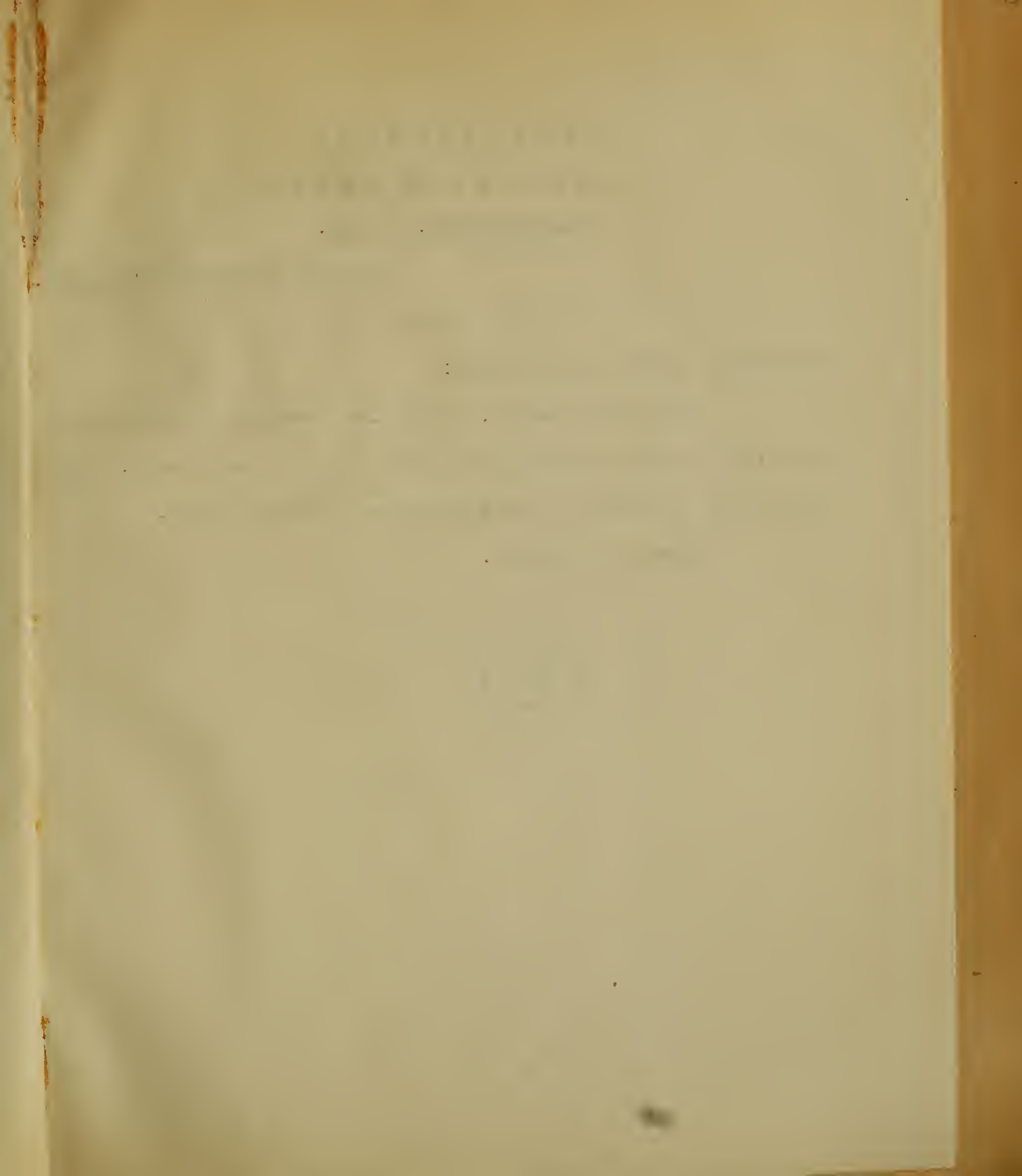
-----ooo-----

DOOLITTLE, ACTING COMMISSIONER:

I agree with the Examiner of Trade Marks that the words "Club Room", sought to be applied as a trade mark to cigars, so nearly resembles the term "Club House," registered as a trade mark on the same article, as not to be substantially different, and calculated by their resemblance to deceive the public.

In view of the vast field of fanciful terms which may be drawn upon for proper trade marks, when the resemblance is so close as in the present case, it is difficult to believe but what such resemblance was intended.

The decision of the Examiner of Trade Marks is affirmed.



A P P L I C A T I O N
of
B E N J A M I N K E N T,

Decided May 26, 1879.

Endorsed on Examiner's Brief.

-----oOo-----

DOOLITTLE, ACTING COMMISSIONER:

This whole matter, in all its forms and substance, constitutes a proper subject for label and not a trade mark. See definition of label in the Appendix of Official Rules.

Examiner affirmed.

// LOXA //



"Stylographic" for ink

A P P L I C A T I O N
of
W A L T E R W I N T H R O P,

Decided May 26, 1879.

Endorsed on Examiner's Brief.

-----oOo-----

DOOLITTLE, ACTING COMMISSIONER:

"Stylographic Pens", which are pens having a reservoir for ink, and a single sharp point like a style, now form a subclass of inventions in this office. They are extensively used, and no doubt inks having certain qualities are best adapted to be used with them. That I think would be the signification given to the word in the present state of the art, whether so intended by the applicant or not. The word, therefore, is objectionable as a trade mark as being in nature descriptive, and not arbitrary and fanciful.

Some years ago the word might have been a proper trade mark, but not now.

The decision of the Examiner is affirmed.

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1883-1884

1885-1886

1887-1888

1889-1890

A P P L I C A T I O N
of
— H E N R Y O. D E R V I E S, —

Decided July 7, 1879.

Endorsed on Examiner's Brief.

-----oOo-----

DOOLITTLE, ACTING COMMISSIONER:

I cannot agree with the Examiner in the case. "Agency's Favorite" appears to me entirely arbitrary and not even recommendatory, so far as a personal application is concerned. I regard the references cited by applicant and the Examiner as more objectionable--or at least more doubtful.

If applicant had used the phrase "Agent's Favorite" a doubt, the same as arises to "Planter's favorite", would appear; but "Agency's favorite" strikes me as impersonal and fanciful.

Examiner reversed.



A P P L I C A T I O N
of
G E O R G E B E N C E,

Decided July 7, 1879.

Recorded Vol. 20, Page 18.

-----oOo-----

DOOLITTLE, ACTING COMMISSIONER:

I am of opinion that the word "Bombay" falls within the doctrine in the case of Cornwall Bro. 12 O.G. 312, and not within the case of Knapp, (the word "London" being the trade mark) decided May 6, 1879.

The decision of the Examiner of Trade Marks is therefore reversed.

A P P L I C A T I O N
of
I S A A C L. S M I T H,

Decided July 7, 1879.

Recorded Vol. 20, Page 18.

-----oOo-----

DOOLITTLE, ACTING COMMISSIONER:

The word "Masonic" is objectionable as a trade mark for the reason that it is not sufficiently arbitrary. It signifies in some degree certain qualities, such as origin and excellence.

Its employment might not lead to actual deception, especially among the masonic order, but it would have that tendency.

At any rate it would be difficult to define the principle by which such a word should be allowed registration, and another differing in descriptive qualities in degree only, should be rejected.

The decision of Examiner of Trade Marks is therefore affirmed.



A P P L I C A T I O N
of
J O H N W H I T T A K E R,

Decided July 9, 1879.

Endorsed on Examiner's Brief.

-----eOo-----

DOOLITTLE, ACTING COMMISSIONER:

It being settled law, that a person cannot adopt as his trade mark the color of the package in which his goods are enclosed, and as it is the practice of applicants to enclose their hams in white packages and the word "white" not being appropriate to the color of the hams themselves, it simply indicates to the world the same thing as the color, and nothing more nor less.

The decision of the Examiner of Trade Marks is affirmed.

Amk. Crack

A P P L I C A T I O N
of
N A T I O N A L R U B B E R C O . ,

Decided July 11, 1879.

Endorsed on Examiner's Brief.

-----oOo-----

DOOLITTLE, ACTING COMMISSIONER:

The doctrine of the Goodyear Rubber Co. case, 11 O.G. 1062, is applicable to the present matter, and is now reiterated and reaffirmed.

The decision of the Examiner of Trade Marks is affirmed.

Sterling

A P P L I C A T I O N
of
L. C A N D E E & C O.,

Decided July 28, 1879.

Endorsed on Examiner's Brief.

-----ooo-----

DOOLITTLE, ACTING COMMISSIONER:

The sense in which the word "Sterling" is objectionable is in that sense in which it is defined by Webster as "genuine, pure, of excellent quality."

All who make rubber goods have the right to represent them as of "excellent quality", and, therefore, have the same right as applicant to apply to them the word "sterling". The word, as thus used, is purely descriptive, and, therefore, objectionable as a trade mark.

Examiner affirmed.

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NEW YORK, N. Y. 10022

THE UNIVERSITY OF CHICAGO

A P P L I C A T I O N
of
J O H N F. F R E S E,

Decided July 28, 1879.

Recorded Vol. 20, Page 54.

-----ooo-----

DOOLITTLE, ACTING COMMISSIONER:

I agree with the Examiner that the word "incomparable", is not fit subject to be registered as a trade mark. But if it were not a common practice to draw the attention of the public to advertisements, &c. by printing black lines upon their face the presence of such a line over this word might give it a different significance than that of a merely descriptive word. It is feared, however, that should the practice be countenanced in a single case, of allowing descriptive words to be registered when combined in this ordinary manner with such a mark, a precedent would be established by which all descriptive words and terms presented as trade marks would have to be registered when used in the same connection. It is also doubted whether the dash renders the word sufficiently distinctive to protect the public from the purchase of spurious goods on which the word "incomparable" might be printed without the mark across it.

The decision of the Examiner is affirmed.

A P P L I C A T I O N
of
T H E D R. H A R T E R M E D I C I N E C O.

Decided July 29, 1879.

Endorsed on Examiner's Brief.

-----oOo-----

DOOLITTLE, ACTING COMMISSIONER:

The decision of the Examiner is affirmed. The doctrine of the U. S. Supreme Court as set forth in the case of the Canal Co. vs. Clark, 13 Wallace, 311, has become the settled practice of the Office, and that is, that "a generic name or name merely descriptive of an article of trade, of its qualities, ingredients, or characteristics, cannot be employed as a trade mark, and the exclusive use of it be entitled to legal protection."

Applicant may amend its application and restrict the trade mark to the monogram and shield. The balance of the label should be registered as a label.

A P P L I C A T I O N
of
D O W I E & M O I S E,

Decided Aug. 4, 1879.

Endorsed on Examiner's Brief.

-----oOo-----

DOOLITTLE, ACTING COMMISSIONER:

I am clearly of the opinion that the proposed amendment does not obviate the objection that the mark of Dowie & Moise so nearly resembles that of Zeilin & Co. as to be likely to deceive the public.

The decision of the Examiner of Trade Marks is affirmed.

S



A P P L I C A T I O N
of
P E V E A R, H A M D E N & C O.,

Decided Aug. 4, 1879.

Endorsed on Examiner's Brief.

-----oOo-----

DOOLITTLE, ACTING COMMISSIONER:

In my opinion the term "Franco-American" (which has been applied to a French-American steamship line and a French-American newspaper) has by usage become a descriptive term, and not proper matter for a trade mark.

The decision of the Examiner of Trade Marks is therefore reversed.

Case for Trade Marks

THE
JOURNAL OF THE
ROYAL ANTHROPOLOGICAL INSTITUTE

Vol. 10, Part 1, 1880
No. 1, 1880
LONDON: PUBLISHED BY THE
Royal Society of London, at the
Royal Institution, 21, BEDFORD SQUARE, W.C.
1880

Standard

A P P L I C A T I O N
of
J O H N A. B R O W N & C O.,

Decided Aug. 13, 1879.

Endorsed on Examiner's Brief.

-----oOo-----

DOOLITTLE, ACTING COMMISSIONER:

"Standard" according to Webster, means "having a fixed or permanent value." All those then who manufacture watches or watch cases of a uniform grade or quality have the common right to the use of this term. As observed by the U. S. Supreme Court no one has a right "to appropriate a sign or a symbol which from the nature of the fact it is used to signify, others may employ with equal truth, and therefore have an equal right to employ for the same purpose." Canal Co. vs. Clark, 13 Wall.

The decision of the Examiner is affirmed.

A P P L I C A T I O N
of
C. T. S W I F T.

Decided Aug. 16, 1879.

Recorded Vol. 20, Page 69.

-----oOo-----

DOOLITTLE, ACTING COMMISSIONER:

Applicant is the proprietor of what he calls "Swifts Syphilitic Specific," and he desires to register as a trade mark the letters S.S.S.

The registration is objected to on the ground that they are not arbitrarily used, being merely the initial letters of the several words forming the phrase above quoted, which phrase appears on the same label.

The question to be determined is the same that so frequently arises with other applications for registration of trade marks. In the proposed symbol in view of the article to which it is to be applied descriptive of the character of that article so that all others making or selling the same article have the right to use the same symbol? If so it cannot be appropriated by applicant as his trade mark. Canal Co. vs. Clark 13 Wall., 311.

July 1891

Dear Sir

I have the pleasure to inform you

that the same has been received

and is now in the hands of the

proper authorities for consideration

and I am sure that you will be

satisfied with the result of the

proceedings.

I am, Sir, very respectfully,

Yours faithfully,

Wm. H. Smith

Secretary

to the Board of Directors

of the City of New York

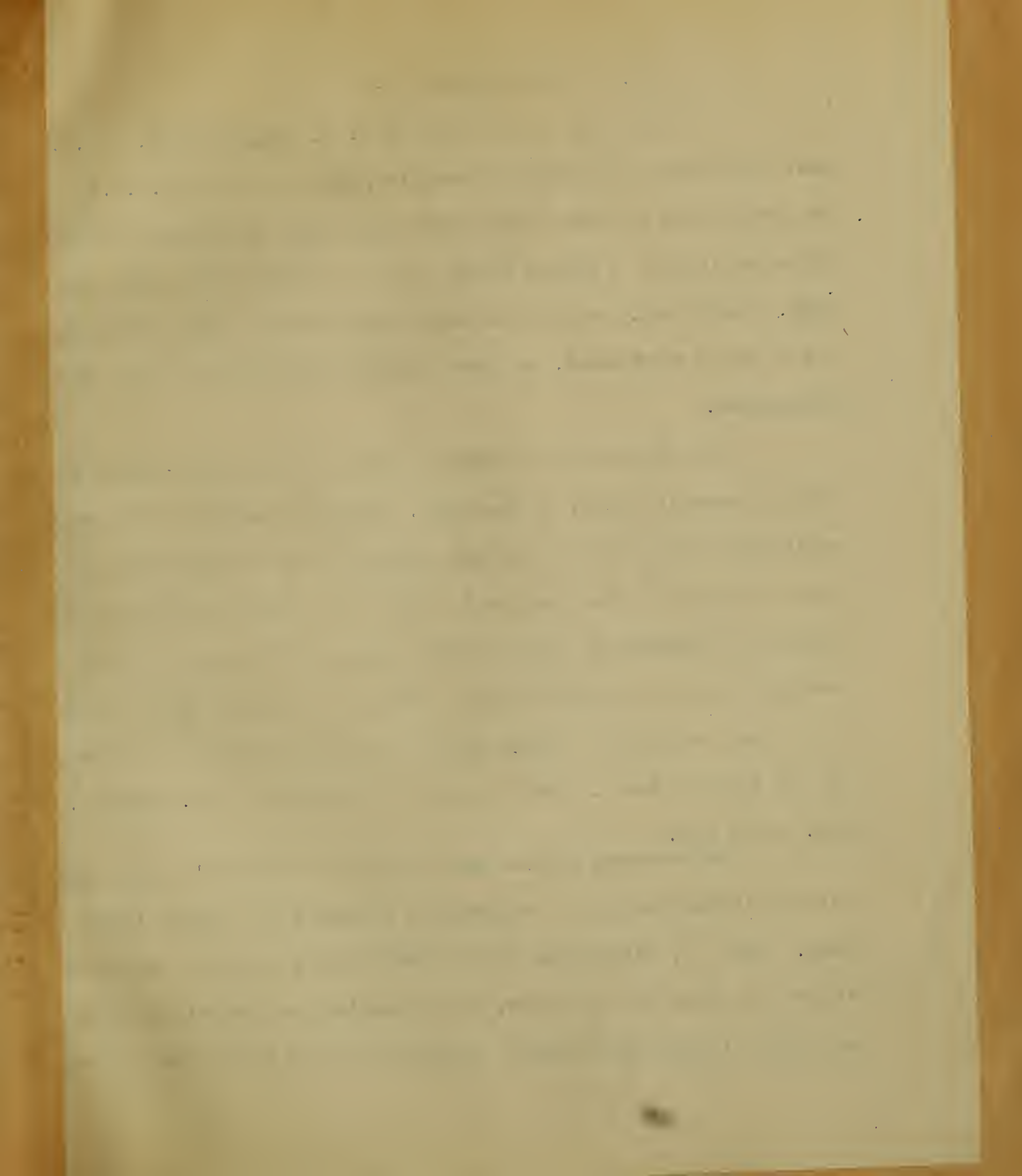
and of the County of New York

and of the State of New York

and of the United States of America

and of the Kingdom of Great Britain

and of the Empire of India



It was held in the case of J. S. Johnson & Co. 2 O.G.315 that the words and letters "Parson's Purgative Pills P.P.P." did not constitute a proper trade mark, and that the initial letters added nothing to a phrase which is not a lawful trade mark without them. That their precise meaning became evident from the words which they accompanied, and were as much descriptive as the words themselves.

In that case the words as well as the initials were to form an essential part of the mark. Here the letters only are to constitute the mark; but the fac simile and the specification both show and restrict the letters to use on the labels which are to be affixed to bottles of the medicine, and on which also in close connection with the initial letters occurs the corresponding phrase. This close connection brings them practically within the doctrine of the Johnson case as well as that of Blakeslee & Co., Commr's. Dec. 1871, 284.

As remarked by the Commissioner in Johnson's case, the letters themselves would probably be regarded as a legal trade mark. That is, disconnected and un^{ss}associated with any phrase of which they were the initials, and presented to the Office as an arbitrary independent symbol, indicative of no particular announce



ment as to character of the goods. In this sense letters and monograms have been properly registered as trade marks. But the letters in this application are not employed in this unobjectionable manner.

The decision of the Examiner of Trade Marks is affirmed.

1871-1872

1871-1872

1871-1872

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1871-1872

A P P L I C A T I O N
of
CAMDEN CONSOLIDATED OIL COMPANY,

Decided Aug. 16, 1879.

Recorded on Examiner's Brief.

-----ooo-----

DOOLITTLE, ACTING COMMISSIONER:

The word sought to be registered is a proper name for
the article, or a similar article, to which it is to be applied.
Registration must therefore be denied.

Examiner affirmed.

"Oleine"



A P P L I C A T I O N
of
I S A A C L. S M I T H,

Decided Aug. 26, 1879.

Recorded Vol. 20, Page 114.

-----ooo----- 16 O. G. 764

PAINE, COMMISSIONER:

The question is whether the word "Masonic" can be law-
fully registered as a trade mark?

Although the noun from which this adjective was formed is old in our language, the adjective itself seems to have been contributed to the language by the order to which it applies, and its only meaning is "pertaining to the craft or mysteries of free masonry."

Applied as a trade mark to cigars it would be descriptive of the cigars, connecting them in origin or use or adaptation with the Masonic order. The words Presbyterian, Methodist or Roman Catholic, used as a trade mark for cigars, would stand on the same footing. Such words are not registrable as trade marks.

The decision of the primary Examiner is affirmed.

1872-1873

1872-1873

1872-1873

1872-1873

1872-1873

1872-1873

1872-1873

1872-1873

1872-1873

1872-1873

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1872-1873

1872-1873

A P P L I C A T I O N
of
C H A S. O S C A R M c C R E E D Y,

Decided Aug. 28, 1879.

Endorsed on Examiner's Brief.

-----oOo-----

DOOLITTLE, ACTING COMMISSIONER:

I do not regard the trade mark No. 2,065, as a proper reference. The decision of the Examiner is reversed, therefore, as to that objection.

The amendment this day submitted and approved appears to me to exclude the words "McCreery's Corn Solvent" as an essential part of the mark, and leaves that phrase as simply restrictive as to the connection in which the real mark, viz: the figure of the boot, is to be used.



A P P L I C A T I O N
of
G O O D W I N & C O.,

Decided Sept. 13, 1879.

Endorsed on Examiner's Brief.

-----oOo-----

DOOLITTLE, ACTING COMMISSIONER:

On consulting Webster I find his definition of the word "Superb" entirely inapplicable to a description of chewing tobacco; and of opinion therefore that it is a fanciful arbitrary term in that connection, and a suitable trade mark for that article.

The decision of the Examiner is reversed.

THE
HISTORY OF
THE
CITY OF
NEW YORK

From the first settlement of the Dutch in 1624 to the present time. By John Smith, Esq. of the City of New York. In two volumes. The first volume contains the history from 1624 to 1789. The second volume contains the history from 1789 to the present time. The first volume is now in the possession of the City of New York. The second volume is now in the possession of the City of New York.

NEW YORK
1800

A P P L I C A T I O N
of
G E O R G E A. W E I S S,

Decided Nov. 25, 1879.

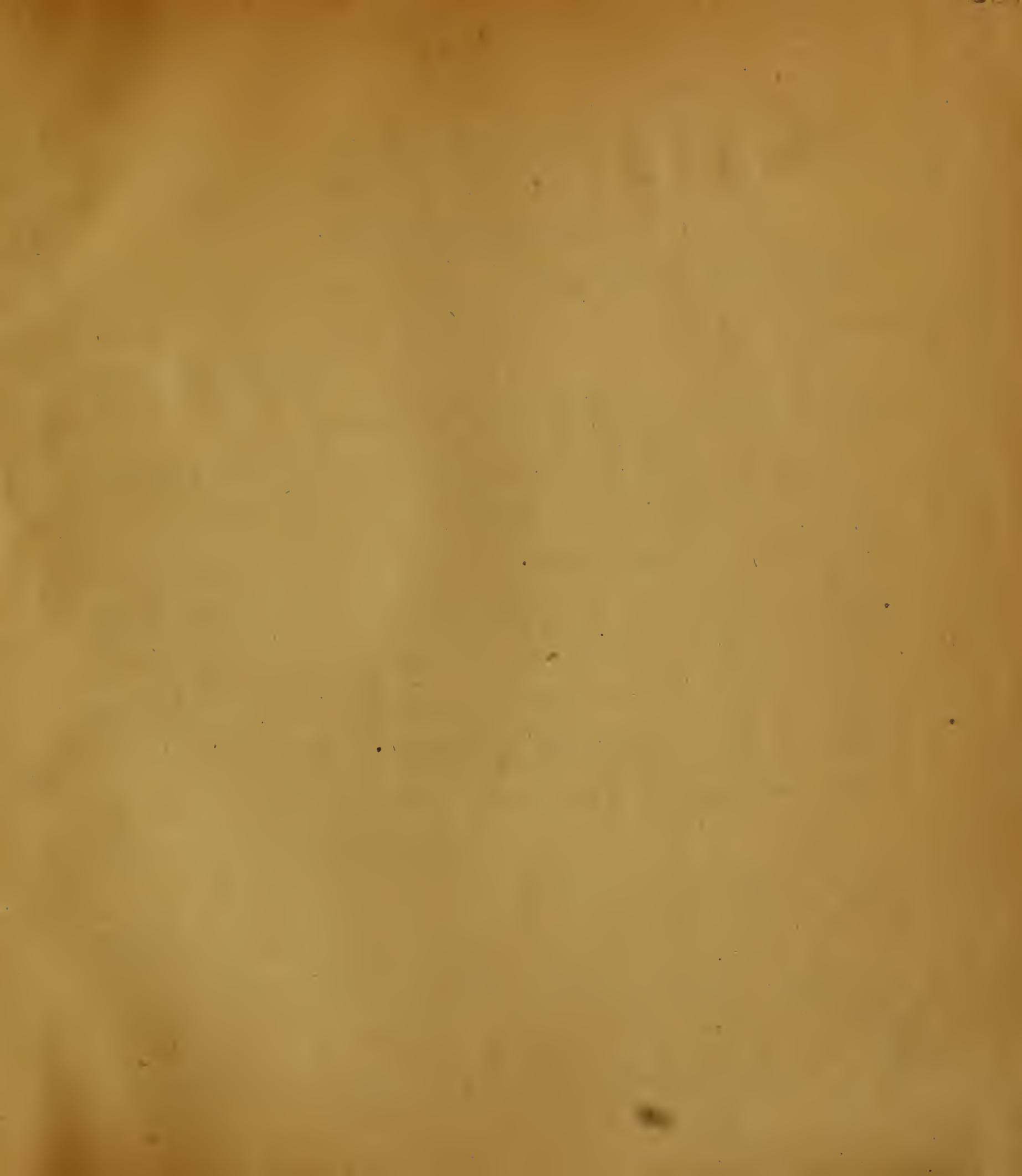
Recorded Vol. 20, Page 216.

-----oOo-----

PAINE, COMMISSIONER:

In my judgment the proposed trade mark is not open to the objections suggested by the Examiner. But his objection to the language used in applicant's argument is well taken. Under the rules of the Office, the argument in its present form cannot be admitted to the files of the case.

Decided for



A P P L I C A T I O N
of
G E O R G E A. W E I S S & C O.,

Decided Jan. 15, 1880.

Recorded Vol. 20, Page 328.

-----oOo-----

PAINE, COMMISSIONER:

This is an appeal from the Examiner in charge of trademarks who declines to register the term "Salvator" applied as a trade mark to Beer. I do not concur in the opinion of the Examiner that this term is incapable of registration as a trade mark because usually applied to the founder of the Christian religion. Salvator Beer has been well known in Europe for generations, if not for centuries. Mueller's Hand Book, for beer brewers, published in the German language at Braunschweig in 1854, in a chapter descriptive of five well known kinds of Bavarian beer, contains the following statement:-

"The Salvator beer also belongs to the class of fancy beers as it is somewhat stronger and richer than Bock Beer.

The Salvator beer has its origin, or more correctly stated, its name, from a brewery in Munich, which in former years, was under a monastical order; and it is not improbable that the Fath-

THE HISTORY OF THE

REIGN OF KING CHARLES THE FIRST

IN THE YEAR 1649

BY JOHN BURNET

IN TWO VOLUMES

LONDON

Printed by J. Sturges, at the Sign of the Crown, in St. Pauls Church-yard, 1689

THE SECOND EDITION

WITH ADDITIONS

TO THE HISTORY

OF THE REIGN OF KING CHARLES THE FIRST

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THE SECOND EDITION

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TO THE HISTORY

OF THE REIGN OF KING CHARLES THE FIRST

IN THE YEAR 1649

BY JOHN BURNET

IN TWO VOLUMES

ers, first of all, had this strong beer brewed for their own refreshment, until finally in later times, the brewery passed into other hands.

The Salvator beer was made only in one brewery in Munich, that of Zacherl, (suburb Aue) and sold every year in the beginning of April, and only during six days; so that the manufacture and retail of this beer remained, up to a very recent period, a monopoly, and the other brewers of the city were not permitted to manufacture it. But in the year 1848, monopolies of fancy beer of all kinds were abolished, so that now they can be produced in any other brewery.

For the production of Salvator beer, as of Bock Beer, it is necessary to use the best malt, which must have been in store for three months, and the finest Saaz (Bohemian) hops; and it generally requires one bushel (scheffel) of dry malt to produce four, at the most $4 \frac{1}{4}$, Eimer of beer, and three pounds of hops are required for each bushel. The process of brewing or fermenting is the same as for Bock beer; the rules are likewise the same for boiling the herbs before and after putting in the hops. The beer herbs have to be refrigerated up to $7\frac{7}{8}^{\circ}$ R; but it receives generally more stuff whereby the fermentation (and sub-fermentation) is

finished a few days sooner. The fermented beer is put, when still somewhat young, into barrels (to procure an earlier sub-fermentation; and, if, after being in the first barrels) into which it is poured from the fermenting vats, it will not become clear, then it has to be put into other barrels, which have to be generally filled up with clear beer of the same sort, brewed likewise in the best season (December or commencement of January), and then left, like Bock Beer, to sub-fermentation, to rest two and a half or three months.

The Salvator beer is not usually bunged, and therefore foams but little, but it is very strong. Its color is a very dark brown and it has a bitter after taste of hops. The herbs out of which this beer is made, show at the saccharometer, from 17 1/2 to 18 1/2 per-cent, and after it has been in store for several months it shows a quantity of alcohol from 4 3/4 to 5 1/2 per-cent, which depends also on the changes which have resulted from the after fermentations of the sugar of malt contained in the beer."

In the American Cyclopaedia, Vol. II, p. 469, published in 1874, it is stated that "There are many kinds of beer brewed in Bavaria, and also in other parts of Germany which receive particular names, as Bock, Heiliger Vater, Augustine double, and Salvator

The first part of the paper is devoted to a general
 discussion of the problem. It is shown that the
 problem is of great importance in the theory of
 functions. The second part is devoted to a
 detailed study of the problem. It is shown that
 the problem is of great importance in the theory of
 functions. The third part is devoted to a
 detailed study of the problem. It is shown that
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 functions. The tenth part is devoted to a
 detailed study of the problem. It is shown that
 the problem is of great importance in the theory of
 functions.

of Munich, brown beer of Meresburg, Berlin White beer, or Champagne of the north; Broyan, a famous Hanoverian beer, double beer of Erlangen, Lichtenstein, and Upper Weimar. All these possess various excellences, particularly the Bavarian beers, most of which are due to the peculiar mode of fermentation."

The work of P. Heiss, on Beer Brewing, published at Augsburg, in 1875, contains the following statement of the Bock and Salvator beer:-(pp 188-9).

"Both these, as is well known, are fancy beers of Munich, and were still privileged within some years, the first on the part of the royal court brewery, and the other on that of the Zachrel brewery in the suburb Aue.

" This latter was a cloister brewery, and held the right as such, to brew a strong beer for the festival of Franz de Paula, which obtained the name of Salvator."

" Since the year 1848, however, all fancy beers have been thrown open and their production thenceforth allowed in all breweries. The manufacture of both these beers is based upon the Munich system of brewing, and they are distinguished in no other respects, than in strength and color, from the ordinary beers. In this process at the court brewery, 36 hectolitres of dry malt

"are applied to one boiling of bock beer.

" On account of the large quantity of malt the thick mash
"is allowed to boil one quarter of an hour longer than usual; the
"degress of heat remain exactly the same. The hops chosen should
"be of the best quality, and amount on an average to 58lbs. per
"boiling. By the customary rule from 2 hectolitres of malt are
"produced 3 hectolitres of beer. The color of Bock beer with its
"delightful flavor, is somewhat browner than that of ordinary
"beers.

" The primary characteristic of Bock beer consists in the
"fact, that while drinking the hop is very noticeable, but not its
"bitterness; on the contrary, the sweetness of the malt is predomi
"nant. At the Zachrel brewery, on the other hand, to one boiling
"of Salvator beer 56 hectolitres of dry malt are taken and 3lbs.
"of hops to 2 hectolitres, which produce 3 hectolitres of beer.

" The Salvator beer is quite brown evento blackish, and
"has generally a bitter after taste, which accordingto our view, is
"to be accounted for by the fact, that with so great a quantity of
"malt, even with the best endeavors, the solution of the malt can-
"not be attained so perfectly as needful."

Watts' Dictionary of Chemistry, published in 1863, shows
on page 533, of Vol. 1, the following table:-

TABLE D.- SPECIAL RESULTS OF THE EXAMINATION OF CERTAIN BEERS.

<u>NAME OF BEER.</u>	<u>Percentage of</u>				Analyzed by
	Malt Extract:	Alcohol:	Carbolic Acid	Water:	
London Porter. (Barclay & Perkins.)-----	6.0	5.4	0.16	88.44	Kaiser
London Porter-----	6.8	6.9	----	80.03	Balling
London Porter (Berlin).-----	5.9	4.7	0.37	89.00	Zuirck
Burton Ale-----	14.5	5.9	----	79.6	Hoffmann
Scotch Ale (Edinburgh).-----	10.9	8.5	0.15	80.45	Kaiser
Ale (Berlin).-----	6.3	7.6	0.17	85.93	Zuirck
Brussels Lambik.-----	3.4	5.5	0.2	90.9	Kaiser
Brussels Faro.-----	2.9	4.9	0.2	92.0	Kaiser
Salvator Bier, Munchen.-----	9.4	4.6	0.18	85.85	Kaiser
Bock bier, Munchen.-----	9.2	4.2	0.17	86.49	Kaiser
Bavarian Draught beer (Schenk bier) Munchen.-----	5.8	3.8	0.14	90.26	Kaiser
Bavarian Store beer, (Lager B.): Munchen 16 months old.-----	5.0	5.1	0.15	89.75	Kaiser
Bavarian Store beer, Munchen---	3.9	4.3	0.16	91.64	Kaiser
Bavarian Draught beer, Brunswick.-----	5.1	3.5	----	91.1	Otto
Bavarian beer, Waldschlosschen--	4.8	3.6	----	91.5	Fischer
Prague Draught beer.-----	6.9	2.4	----	90.7	Balling
Prague Town Beer (Stadt-bier).--	10.9	3.9	----	85.2	Balling
Sweet Beer, Brunswick.-----	14.0	1.36	----	84.7	Otto

<u>NAME OF BEER.</u>	<u>Percentage of</u>				
	Malt Extract:	Alcohol:	Carbolic Acid :	Water:	Analyzed by
Josty's Beer, Berlin-----	2.6	2.6	0.5	94.3	Zurick
Weder's Brown Beer, Berlin.---	3.1	2.3	0.3	94.2	Zurick
White Beer, Berlin.-----	5.7	1.9	0.6	91.8	Zurick
Biere blanche de Louvain.-----	3.0	4.0	---	93.0	Le Cambre
Petermann, Louvain.-----	4.0	6.5	---	89.5	Le Cambre
Mum, Brunswick.-----	45.0	1.9	---	53.1	Freytag & Busse.

The Chemistry of Daily Life, published in the German language, at Leipsic, in Berlin, in 1873, contains the following statement on page 175. "The beers richest in alcohol are the English Edinburgh Scotch Ale, containing 8.5 per-cent; Brussel's Ale, 7.6; London Porter, 6.9; Burton Ale, 5.9; Brussel's Lambik, 5.5; Bavarian Lager Beer, 5.1; Salvator Beer, Muenchen, 4.6; Bock Beer, Munchen, 4.2; Bavarian Schenk Beer, 3.5 to 3.8; Waldschlossen, 3.6 and Schenk Beer of Prague, 2.4; Stadt Beer of Prague, 3.9; Berlin Weiss Beer, 1.9."

Ure's Dictionary of Arts, Vol. 1, p. 157, contains the following table of exhibits and results of the chemical examinations of eight different kinds of beer:-

Quaintity in 100 parts by weight.

<u>NAME OF BEER.</u>	<u>:Water:</u>	<u>Malt</u>	<u>:Alcohol:</u>	<u>Carbonic:</u>	<u>Analyst</u>
	<u>:Extract:</u>			<u>Acid</u>	
Augustine double beer, Munich.-	:89.86:	8.0	: 3.6	: 0.14	: Kaiser
Salvator beer.-----"	:87.62:	8.0	: 4.2	: 0.18	: "
Bock beer, royal brewery-----"	:88.64:	7.2	: 4.0	: 0.16	: "
Schenk (pot) beer, Bavarian Co.	:	:	:	:	:
brewery; a kind of small beer.-	:92.94:	4.0	: 2.9	: 0.16	: "
Bock Beer, Brunswick, Bavarian--	:88.50:	6.50	: 5.0	: ----	: Balhorn
Lager (store) beer, of Bruns-	:	:	:	:	:
wick, Bavarian kind-----	:91.0 :	5.4	: 3.50	: ----	: Otto
Brunswick Sweet small beer----	:84.70:	14.0	: 1.30	: ----	: "
Brunswick mum-----	:59.2 :	39.0	: 1.80	: 0.1	: Kaiser

These facts dissipate the objection that the term "Salvator Beer," is blasphemous, But the same facts establish the descriptive character of the term. If used as a trade mark by the applicant for registration, it will be descriptive when applied to the beer to which it has been for generations, if not for centuries applied, or deceptive if applied to beer of a different kind. It is therefore incapable of registration as a trade mark.

The decision of the Examiner of Trade Marks is therefore affirmed.

Dec 20/01

A P P L I C A T I O N
of
G E O R G E A. W E I S S & C O.,

Decided Feb. 18, 1880.

Recorded Vol. 20, Page 413.

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PAINE, COMMISSIONER:

Weiss & Co. applied for the registration of the term "Salvator," as a trade mark for Lager Beer. It was rejected on the ground that inasmuch as printed publications showed it to have been applied to a certain kind of Lager Beer brewed in Munich, Bavaria, for many generations, if not for centuries, and also gave the chemical analysis of the beer, and described the process of manufacture, the term had become descriptive or generic, and designated a particular kind of beer.

The applicant suggest, on motion for rehearing, that the purchasers cannot be led, by the use of this trade mark, to suppose that the beer of the applicants was manufactured in Munich, and is of the same kind and quality as the Salvator beer, so called in that city, because the label upon which the word "Salvator" is printed contains the following notice in the English, German, French and Spanish languages, to wit: "This beer is brewed from

Canada malt and Madison County hops."

The applicants also assert, that all persons who have heard of, or tasted the Salvator beer brewed and sold in the city of Munich, are well aware that such beer is not brewed from Canada malt and Madison County hops, but is brewed from malt and hops prepared and raised in Germany; and further, that the great majority of the purchasers of the beer have never heard of the city of Munich, or of the Salvator beer brewed in that city; and they disclaim, under oath, all intent to deceive purchasers or consumers with their beer, by causing them to believe, that it was brewed in Germany, or was identical in kind and quality with the Salvator Beer brewed in that city.

It is not necessary that a word, in order to be descriptive in such a sense as to be incapable of lawful registration as a trade mark, should be descriptive of the quality or condition of the merchandise to which it is applied, as the word "Prime" is descriptive of the quality of mess pork, or "Granulated" of the condition of sugar; but it is enough of the term, whether having the same meaning, or a different meaning, or no meaning at all, in other applications, designates the kind of merchandise to which it is applied in the particular case, as the term "Clarence" designates a kind of carriages, or the term "Sea Island" a kind of cotton.

As all persons who sell prime mess pork, or granulated sugar, have the right to apply these terms to their merchandise, and all persons who sell Clarence carriages have the right to apply the term "Clarence" to their carriages (unless prevented by the existence of a lawful trade mark, in favor of the persons who first applied that term to carriages, or of his assigns) so all persons who manufacture "Salvator" lager beer, the analysis of which is of record and accessible to all, have a right to apply that term to their beer, and no individual can monopolize the right, except the person who first adopted the trade mark or his assigns.

The case would stand on a different footing if the application had been made for the registration of the name "George A. Weiss" as a trade mark applicable to Salvator lager beer, the name being Geo. A. Weiss' own genuine autograph, or an exact facsimile thereof. George A. Weiss & Co. could, with the consent of George A. Weiss, register that signature as a trade mark. Such registration would secure to the firm a monopoly of the use of that autograph, in connection with Salvator lager beer, or, which is the same thing, of the use of the words Salvator lager beer, in connection with the autograph. But it would give no monopoly of

the word Salvator, as applied to lager beer. Others could apply it to lager beer, in connection with other signatures, or without any signature.

The word "Salvator" is, itself, inadmissible as a trade mark for lager beer. Motion overruled.

A P P L I C A T I O N
of
G O O D W I N & C O.,

Decided Dec. 8, 1879.

Recorded Vol. 20, Page 232.

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PAINE, COMMISSIONER:

On the 12th of December, 1876, the words "The Judge Habana" and the monogram "P.L.C." were registered as a trade mark No. 4199, for cigar boxes, in favor of Perlee L. Chambers, of Indianapolis, Indiana.

The word "Judge" was registered as trade mark No. 4801, July 3, 1877, for cigars, cigarettes, smoking tobacco and chewing tobacco in favor of Hirsch & Co. of New York.

On the 24th of July, 1877, the words "Old Judge" were registered as trade mark No. 4938 for smoking tobacco in favor of Goodwin & Co. of New York. The examiner states that this registration was inadvertently made, No. 4801 being overlooked.

On the 21st, of June 1878, Goodwin & Co. applied for the registration of the words "Old Judge", as a trade mark for cigars, cigarettes, and chewing tobacco. The application was rejected by the examiner upon reference to No. 4801, on the ground that the

resemblance between the terms "Judge" and "Old Judeg" was sufficient to deceive the public. This rejection was affirmed by the Acting Commissioner. Subsequently Goodwin & Co. produced an assignment from Hirsch & Co. to themselves of trade mark #4801, except so far as it applied to cigars; and thereupon the Acting Commissioner granted registration of the words "Old Judge" in their favor, as a trade mark for cigarettes and chewing tobacco, but not for smoking tobacco. This registration was numbered 7274, and dated May 6, 1879.

On the 9th of May 1879, Goodwin & Co. applied for the registration of the words "Old Judge", as a trade mark for cigars, and were rejected on registration #4801. From this rejection they appeal to the Commissioner; and they present two documents dated November 26, 1878, one executed by P.L.Chambers, and the other by Goodwin & Co. The former purports to be an assignment by Chambers to Goodwin & Co. of the cigar-box trade mark #4,199. The second purports to be a license back by Goodwin & Co., to Chambers to sell under this cigar-box trade mark, "so far as a right is secured under said trade mark, for and during the term of his natural life," and a stipulation by Goodwin & Co., not to manufacture cigars under the trade mark themselves, nor to grant to any persons

except Chambers, the right to manufacture. This stipulation is not limited as to time.

The appellants insist that this assignment gives them the same right to the registration of the words "Old Judge", as a trade mark for cigars, which Hirsch's assignment gave them to the registration of these words, as a trade mark for cigarettes and chewing tobacco.

The decision of the Acting Commissioner granting registration of the words "Old Judge", as a trade mark for cigarettes and chewing tobacco, based upon the assignment of Hirsch & Co., notwithstanding his former decision that the symbols "Judge" and "old judge" were so nearly alike as to deceive the public, was final in that case and cannot be disturbed.

But in this new case I should be unable to adopt it. It seems to me to be opposed to the policy of the law to register, whether for the same applicant or whether for different applicants, two different trade marks which resemble each other so nearly as to be likely to deceive the public. When their resemblance is so close, the registration of one excludes all but the registrant from the use of either. The registrant may use both, one because it is registered in his favor, and the other because there is no

one to contest his right to use it. But the separate registration of such similar words, even in favor of one applicant, would in cases of assignment to different purchasers, occasion embarrassment which it is the policy of the law and the interest of the public to avoid.

But then, the difference between the assignment of Hirsch & Co. and that of Chambers, was very marked. The former transferred the exclusive right to manufacture and sell cigarettes smoking tobacco and chewing tobacco. But what, if anything, the latter transferred, it is not easy to perceive. | The trade mark which constitutes the basis of the transaction was the trade mark, not for cigars, whether in bunches or in boxes, but for cigar-boxes. It does not appear whether Chambers was a manufacturer and vender of cigar-boxes alone, or of cigars, or of both. And then the effect of the documents is not to transfer to Goodwin & Co. any right whatever to manufacture cigars, whether under this cigar-box trade mark or any other trade mark. On the contrary they bind themselves by stipulation not to manufacture cigars.

Whatever rights Goodwin & Co. may have acquired by the purchase of the trade mark of Chambers are probably as perfectly secured now as they would be if this proposed new registration were superadded. But whether they are or are not so secured, and whatever they may amount to, the present application cannot be lawfully granted.

The decision of the Examiner of Trade Marks is affirmed.

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A P P L I C A T I O N
of
P. C E N T E M E R I & C O.,

Decided March 17, 1880.

Recorded Vol. 20, Page 489.

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PAINE, COMMISSIONER:

The applicant seeks to register as a trade mark for gloves a looped "flourish", in connection with his name, "Centemeri." If his proposed trade mark were merely a punctuation mark placed after his name, it would not be registrable as a trade mark. But the figure of a diamond or of a star so used would be registrable. There would be no room for doubt in either of these two cases. The proposed symbol ~~represents~~ represents a case which falls between the two. It is not free from doubt. I resolve the doubt in favor of the applicant; but he can only use the mark in connection with the name "P. Centemeri," for that is the only name shown in his fac simile.

The decision of the primary Examiner is modified accordingly.

25

A P P L I C A T I O N
of
G E O R G E A. W E I S S,

Decided Nov. 24, 1879.

Recorded Vol. 20, Page 216.

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PAINE, COMMISSIONER:

In my judgment the proposed trade-mark is not open to the objections suggested by the examiner. But his objection to the language used in applicant's argument is well taken. Under the rules of the Office, the argument in its present form cannot be admitted to the files of the case.

"Salvator" for Beer.

255

A P P L I C A T I O N
of
S A M U E L R. P E R C Y,

Decided March 23, 1880.

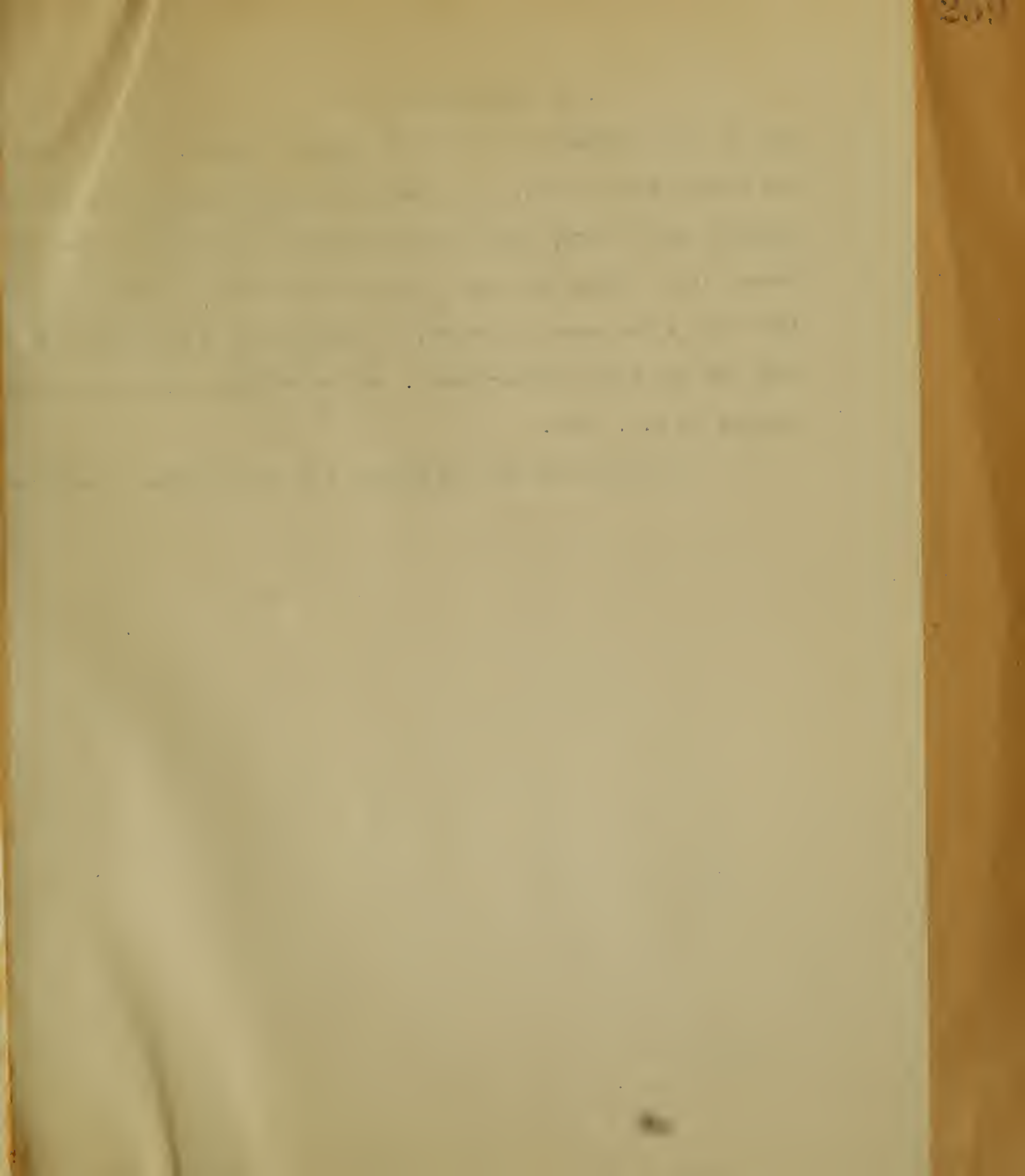
Recorded Vol. 21, Page 3.

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DOOLITTLE, ACTING COMMISSIONER:

The applicant desires to register the word "Vitalized" as a trade mark in connection with phosphates and hypophosphates.

I have some doubt as to this matter, but after careful consideration, have concluded that the term "Vitalized" is a fanciful and arbitrary one. The applicant has discovered no new property of phosphates, and they have been always as much "vitalized" as they are at present, but he has drawn them from different sources and arranged them in different proportions than he has done before and has given this name to his compound, by which it has become known to the medical profession. It is no objection to a word as a trade mark that it is used to attract attention as an advertisement, if it does not convey a false impression. To all those who are acquainted with phosphates and their nature, the word "vitalized" would impress them as having but a fanciful signification. It is the nervous system which is claimed to be vitalized by the



use of this compound, and not the compound itself. If the term has become descriptive, it is due to the use made of it by the applicant, and a term, which, when originally adopted, was not generic, if it become so during the continued use of the proprietor, that fact alone does not render it improper as a trademark, if such use has been uninterrupted. Ex parte Consolidated Fruit Jar Company 16 O.G., 679.

The decision of the Examiner of Trade Marks is reversed.

261

A P P L I C A T I O N
of
C O M B E & O R I O L,

Decided March 29, 1880.

Recorded Vol. 21, Page 13.

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PAINE, COMMISSIONER:

The applicants offer as a trade mark for registration for kid-leather the French word "Grison", which means "Gray-head", "Gray-beard", "Footman in gray livery," "Ass," "Donkey."

The examiner rejects the application on the ground that inas-much as donkey-skins are used for leather, the term in its appli-cation as a trade mark to kid leather would be descriptive or de-ceptive. This objection does not seem to me to be well taken.

If kid leather is gray, every dealer in kid leather has a right to describe it as gray (gris). No trade mark registration would be effective to destroy that right. But it does not follow that every dealer in kid leather would be entitled, in defiance of another's trade mark, to call it "Grison," "Gray-beard," "Gray-head," "Ass," or "Donkey." All dealers in blue flannel are enti-tled to apply to their goods, in defiance of any registered trade-mark, the term "Blue," but not the terms "Blue-beard", "Blue-laws";

THE JOURNAL OF THE

ROYAL ANTHROPOLOGICAL INSTITUTE

FOR 1901

EDITED BY

ALFRED C. HENRI

THE JOURNAL OF THE ROYAL ANTHROPOLOGICAL INSTITUTE FOR 1901, VOLUME 31, PART 1, contains the following articles:

1. The Prehistoric Antiquities of the Lake District, by J. H. R. MACDONALD.

2. The Prehistoric Antiquities of the Lake District, by J. H. R. MACDONALD.

3. The Prehistoric Antiquities of the Lake District, by J. H. R. MACDONALD.

4. The Prehistoric Antiquities of the Lake District, by J. H. R. MACDONALD.

5. The Prehistoric Antiquities of the Lake District, by J. H. R. MACDONALD.

6. The Prehistoric Antiquities of the Lake District, by J. H. R. MACDONALD.

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9. The Prehistoric Antiquities of the Lake District, by J. H. R. MACDONALD.

10. The Prehistoric Antiquities of the Lake District, by J. H. R. MACDONALD.

11. The Prehistoric Antiquities of the Lake District, by J. H. R. MACDONALD.

12. The Prehistoric Antiquities of the Lake District, by J. H. R. MACDONALD.

"Blue-socking," or "Blue-nose." In all of these cases the designations, although more or less related in signification to the descriptive adjectives "gray" and "blue", respectively, have nevertheless additional arbitrary meanings which qualify them for use as trade marks.

The decision of the primary examiner is reversed.

"Foutz" Trade Label

A P P L I C A T I O N

of

S A R A H J. F O U T Z,

Decided April 15, 1880.

Recorded Vol. 21, Page 36.

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DOOLITTLE, ACTING COMMISSIONER:

The alleged trade mark in this case is, in fact, and should be registered, as, a label. The color of the label being old as applied to this class of articles cannot be registered as a trade mark, as it has no distinctive quality or signification.

The decision of the Examiner is affirmed.

(Modified so far as it relates to the word "Foutz". See Commissioner's endorsement on Amendment of April 20, 1880 in the file.)

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Label ?

A P P L I C A T I O N
of
L A U T Z B R O S . & C O . ,

Decided April 16, 1880.

Endorsed on Examiner's Brief.

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DOOLITTLE, ACTING COMMISSIONER:

Examiner's decision affirmed on the same grounds set forth in his answer to the reasons of appeal.

Applicant apparently disclaims or omits in his specification the feature of the bar of soap held in the man's hand. But the fac simile shows that feature, and that is evidence that applicant intends to use it.

*Mark same as one formerly
registered of same applicant*

Label

A P P L I C A T I O N
of
P. L O R I L L A R D,

Decided April 24, 1880.

Recorded Vol. 21, Page 47.

-----oOo-----

DOOLITTLE, ACTING COMMISSIONER:

Applicant desires to register as labels, subject-matter properly constituting trade-marks. In the case of Simpson & Son, (10, O.G., 333,) it was decided that such registration could not be effected, and the decision in this case cannot be regarded as the less binding because the trade-mark ^{has} been decided to be unconstitutional. That the subjects to be registered are properly trade-marks is evident, and being such, they cannot be labels, and therefore are not entitled to the registry provided by law in such cases.

The Examiner's decision is affirmed.

THE UNIVERSITY OF CHICAGO

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THE HISTORY OF

THE UNITED STATES

OF AMERICA

By J. C. CALHOUN, Esq. of South Carolina.
In two Volumes.
Vol. I.
NEW-YORK: PUBLISHED BY J. C. CALHOUN, 1825.
LONDON: PUBLISHED BY J. C. CALHOUN, 1825.

The History of the United States of America, from the first settlement of the colonies to the present time, is a subject of great interest and importance. It is a subject which has attracted the attention of the whole world, and which has been the subject of many valuable works. The author of this work, J. C. Calhoun, Esq. of South Carolina, is one of the most distinguished statesmen and writers of the age. His work is a masterpiece of history, and is one of the most valuable works of the century. It is a work which is not only interesting and valuable, but which is also one of the most beautiful and most carefully executed works of the age. It is a work which is not only a masterpiece of history, but which is also one of the most beautiful and most carefully executed works of the age.

A P P L I C A T I O N
of
G O O D W I N & C O.,

Decided May 10, 1880.

Recorded Vol. 21, Page 69.

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DOOLITTLE, ACTING COMMISSIONER:

In this case the Commissioner decided Dec. 8, 1879, that applicants should not register their present trade mark (the words "Old Judge" on cigars) in view of the previous registration of the word "Judge" on cigar boxes, and cigars, to Chambers and Hirsch & Co. numbered respectively 4199 and 4801.

Since that decision applicants have obtained by revocation of a previous license, an unqualified assignment of all of Chambers' right, title and interest in trade mark #4199. Of course they possess all the right to use said trade mark that Chambers possessed under his registration, and a further registration of the words "Judge" or "Old Judge" on cigars would appear unnecessary for their protection.

Besides such registration cannot be had by applicants without an interference with Hirsh & Co's. mark #4801 on cigars. If applicants were the assignees of the latter named owners I think

they might register their word "Old Judge" on cigars, as the statutes, although it prohibits this Office from registering a trademark belonging to a different owner, does not prohibit the same owner from re-registering his mark if thereby he can by a correction in description better protect his own rights and at the same time not injuriously affect the rights of others.

Application denied in view of Hirsh & Co's. registration as above set forth.

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A P P L I C A T I O N
of
S I M O N H E R N S H E I N & B R O T H E R,

Decided May 21, 1880.

Recorded Vol. 21, Page 98.

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MARBLE, COMMISSIONER:

Applicants in this case seek to register the designation "'Alf and 'Alf'" as a trade-mark for chewing and smoking tobacco, cigars and cigarettes.

The Examiner has denied the registry as to all the articles mentioned, except chewing tobacco, upon the ground that it is in conflict with and is anticipated by a prior certificate of registration issued to F. S. Kinney July 6, 1875. Kinney's registered trade-mark, as his specification states, "consists of two figures, 1/2, 1/2, each expressing the number one-half and joined by the character &."

Section 4939 of the Revised Statutes prescribes "that the Commissioner of Patents shall not receive and record any proposed trade-mark X X X which is identical with a trade-mark appropriated to the same class of merchandise, and belonging to a different owner and already registered, or received for registration,

or which so nearly resembles said last mentioned trade-mark as to be likely to deceive the public." The expression " 'Alf and 'Alf" is but a well known corruption of the words "Half and Half," its signification is the same, and the difference in the sound of the words when spoken is not an appreciable one. It is this expression that registrant Kinney has indicated by his peculiar mark, and these are the words that would naturally be used by purchasers in asking for this particular brand. The mere fact that the two marks when seen are distinguishable does not indicate a sufficient difference, for the brand, should it once become popular, will be as well known by its name as the peculiar appearance of the mark upon it. (Coggin, Kidder & Co., 11 O.G., 1109; American Lubricating Oil Co., 9 O.G., 677; Jules E. Caire, 15 O.G., 248.)

For this reason the Office has repeated^{ly} refused to register the words "Star", "Boquet", and the like, where corresponding symbols had before been employed. In my opinion the mark employed by the applicant so nearly resembles that of the registrant Kinney that the public would be deceived thereby.

The decision of the Acting Examiner of Trade-Marks is therefore affirmed.

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A P P L I C A T I O N
of
C H A S. F O R T I N & C O.,

Decided May 22, 1880.

Recorded Vol. 21, Page 96.

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MARBLE, COMMISSIONER:

In this case the decision of the Examiner is affirmed
for the reasons stated in his decisions of April 20" and 26",
1880.

"Alexandre" for Kid gloves

Label

A P P L I C A T I O N
of

M. J. F U Z Z A R D,

Decided May ³¹~~24~~, 1880.

Recorded Vol. 21, Page 120.

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MARBLE, COMMISSIONER:

The decision of the Examiner in this case is affirmed.

Entered & TM

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A P P L I C A T I O N
of
S. H. G R E E N B A U M,

Decided May 25, 1880.

Recorded Vol. 21, Page 111.

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MARBLE, COMMISSIONER:

Applicant in this case seeks to register as a label a printed slip having upon one side arranged as below the following words:

"Pure Excelsior Jewellery.

W A R R A N T E D.

TRADE MARK. I X L."

Upon the reverse side of this slip is certain printed matter commending the "Excelsior Jewellery" to the public.

The Examiner has refused the registration upon the ground that applicant's label embraces proper subject-matter, if not anticipated, for trade-mark registration, and in support of his position has referred to the Commissioner's decision in the case of Simpson and Sons, 10, O.G., 333. I cannot agree with counsel for applicant in his assertion that this is an obsolete decision. It

was based upon the former decisions of the Commissioner in the cases of A. Godillot, C.D., 1874, p. 122, and Orcutt and Son, C.D. 1875, p. 102, and has been approved in the cases of J. D. Park, 12 O.G., 2; T. Davis and Co., 16 O.G., 94, and in the recent case of P. Lorillard, April 24, 1880, MS. Decisions, Vol. 21, p. 27. These decisions are clearly in point in this case, and in my judgment rightly expound the law and fully sustain the Examiner's action.

The obvious purpose of the act of June 18, 1874 (chapter 301, section 3) was to supplement, and not in any way to supersede, the provisions of the statute relative to the registration of trade-marks, and construing these statutes together I am of the opinion that matter which is capable of registration as a trade-mark cannot be protected as a label.

The fanciful word "Excelsior" and symbol "I.X.L." are obviously proper matter for trade-mark registration, and separated as they are in the present instance from all printed matter descriptive of the contents of the package or articles to which the slip is to be attached would undoubtedly convey to the public the false impression that these fanciful designations as associated with jewelry, and not merely the slip with its printed description are the object of protection.

The decision of the Examiner is affirmed.

THE HISTORY OF

THE CITY OF LONDON

FROM THE FOUNDATION

OF THE CITY, BY JOHN STOW, AN INHABITANT THERE, AND AN ANTIQVARY OF THE SAME. THE SECOND EDITION, CORRECTED AND ENLARGED. LONDON, Printed by I. B. for J. Stow, at the Sign of the Anchor, in St. Dunstons Church-yard, 1667.

THE HISTORY OF THE CITY OF LONDON, FROM THE FOUNDATION OF THE CITY, BY JOHN STOW, AN INHABITANT THERE, AND AN ANTIQVARY OF THE SAME. THE SECOND EDITION, CORRECTED AND ENLARGED. LONDON, Printed by I. B. for J. Stow, at the Sign of the Anchor, in St. Dunstons Church-yard, 1667.

82

Carlisle

A P P L I C A T I O N
of
E. H. T A Y L O R J R. C O.,

Decided Aug. 10, 1880.

Recorded Vol. 21, Page 304.

-----oOo-----

MARBLE, COMMISSIONER:

I agree with the Examiner that the corporation applicant in this case has failed to comply with the requirements of the statute in not stating the length of time during which the mark has been in use, but with the other formal requirements there has been a substantial compliance.

I must affirm the decision of the Examiner in refusing registration of the word "Carlisle", this being a geographical term. My views in cases of this character are fully set forth in the decision rendered August 10th, in the case of ex parte Farnum and Co., and need not be repeated here.

Carlisle

A P P L I C A T I O N
of
E. H. T A Y L O R J R., C O .,

Decided July 9, 1881.

Recorded Vol. 22, Page 245.

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MARBLE, COMMISSIONER:

The examiner of trade marks requests instructions upon the application of E. H. Taylor Jr., Co., for the registration of the word "Carlisle" as a trade-mark for whiskey.

A like application was heretofore made by the same party and was rejected by my decision of August 10, 1880, for the reason that the word "Carlisle" was a geographical term. The attorney of applicants files a motion for reconsideration of that decision under the law of March 3, 1881. Technically, the motion should not be considered, because the law under which the office was in 1880 receiving and registering trade-marks no longer is used as a basis for the registration of trade marks according to the forms of law. The law under which the former application was filed having ceased to be used for any purpose, a motion for the reconsideration of the case decided prior to the act of March 3, 1881, has no standing, because with the law, or the use that was made of it,

fell all proceedings under it.

A trade-mark, however, is a trade-mark without any statutory law; the statute simply gives protection to persons who have adopted some device, word, &c., as a trade-mark, properly recognized and treated as such. There is no difference in the essentials of a trade-mark under the act of March 3, 1881 which did not exist before the passage of that act. What was a trade-mark therefore before its passage is a trade-mark now, and what was not then a trade-mark is not now a trade-mark.

So far as I am able to learn, geographical terms have never been held to be good trade-marks. Undoubtedly there are cases where words with a geographical signification have been received and registered as trade-marks, but such has not been the usual practice, nor are such words, except in peculiar cases, properly registrable as trade-marks.

The word "Carlisle" has a geographical signification in this country, and all persons living in either of the cities of that name have the right to make and use such articles of merchandise as they please, the making and using of which are not in violation of law.

I know of no reason why any particular person should

have the protection, or semblance of protection, to the use of that word to the exclusion of others in the manufacture and sale of whiskey, or any other merchantable product.

The reasons which have uniformly been given by this Office for the rejection of applications on the ground that the terms used were geographical, it seems to me are correct, and should still be adhered to.

The motion to re-open the former case is denied, and the Examiner is instructed to continue the same practice which has heretofore prevailed in cases like the one presented.

Carlisle

A P P L I C A T I O N
of
E. H. T A Y L O R J R. C O.,

Decided Aug. 17, 1881.

Recorded Vol. 22, Page 311.

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MARBLE, COMMISSIONER:

Applicant seeks to register the word "Carlisle" as a trade-mark on whiskey manufactured and sold by it. The examiner of Trade-Marks refused the registration in accordance with my decisions of Aug. 11, 1880 and July 9, 1881. Both of said decisions proceed upon the idea that the word "Carlisle" has a geographical signification, and hence is not registrable as a trade-mark.

Upon further consideration and inquiry into the case, I am satisfied that, while the principles announced in said decisions are correct in a case to which they properly apply, the facts in this case do not warrant the conclusion that the word "Carlisle" has any geographical signification. The company which has adopted that word as its trade-mark has its principal place of business at Frankfort, Kentucky, and with the word "Carlisle" there is given to the public not only the kind of whiskey upon which it is used but the place where it is distilled. While there are many places

in this country named Carlisle, there is no attempt to connect any such place with the manufacture or sale of this whiskey. As used here the word has an arbitrary character without signifying either the name of a place or of a person. Words when so used, although they may be names of persons or places, if distinct and separate from persons and places, I think are registrable as trade-marks.

The views heretofore expressed with reference to this particular trade-mark, are therefore overruled, and the petition of applicant is allowed.

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A P P L I C A T I O N
of
D A Y T O N P A R K E R,

Decided July 15, 1880.

Recorded Vol. 21, Page 244.

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MARBLE, COMMISSIONER:

Applicant's appeal is somewhat indefinite and is not in proper form, as his purpose appears to be simply to obtain the privilege of having the case re-opened, in order to correct his specification. This the Examiner can allow without an appeal.

To avoid the possible necessity, however, of considering at a future time the question raised by the Examiner's objection of the case upon its merits, I may state now my approval of his action in refusing the registration. The essential features of the mark are stated to be the words "Parker's Bronchial Lung and Liver Pad Combined." The statute (Sec. 4939, R.S.) expressly provides that "The Commission of Patents shall not receive and record any "proposed trade-mark which is not and cannot become a lawful trade "mark, or which is merely the name of a person, firm, or corporation unaccompanied by a mark sufficient to distinguish it from "the same name when used by other persons,&c." The name Parker's



is not, therefore, one which of itself can present proper subject-matter for registration. The words "Bronchial Lung and Liver Pad Combined" are clearly descriptive, and, such being the case, can be used with equal truth, and, consequently, with equal right, by any other manufacturer of such combined pads.

The courts and the office have repeatedly denied the validity of such marks. (Newman V. Alvord, 49 Barb., 588; Brooklyn White Lead Co. v. Masury, 25 Barb., 416; Canal Co. v. Clark, 1 O.G., 279.)

Under the section of the statute above quoted, the word "Parker's" is clearly not entitled to registration, and since the accompanying words are merely terms of description, they cannot be said to be "sufficient to distinguish it from the same name when "used by other persons."

The decision of the Examiner of Trade-Marks is accordingly affirmed.

THE HISTORY OF

THE CITY OF BOSTON

FROM 1630 TO 1800

BY

JOHN

WATSON

OF THE CITY OF BOSTON

IN TWO VOLUMES

VOLUME I

THE CITY OF BOSTON

FROM 1630 TO 1800

BY

JOHN

A P P L I C A T I O N
of
J O H N W. C A R R O L L,

Decided Aug. 11, 1880.

Recorded Vol. 21, Page 314.

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MARBLE, COMMISSIONER:

Since this appeal was taken counsel for applicant has filed a certified copy of a decision rendered in a case of Carroll v. Etheiler, by Butler, Justice, in the Circuit Court for the Eastern District of Pennsylvania. As it is claimed that this decision should determine the action of the office, it is properly cognizable by the examiner in the first instance, and the case is accordingly remanded to him for his further consideration.

A P P L I C A T I O N
of
B U C H A N A N & L Y A L L,

Decided Oct. 12, 1880.

Recorded Vol. 15, Page 397.

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MARBLE, COMMISSIONER:

Applicants in their specification state that "the essential feature of the trade-mark consists of the border, three sides of which are formed of representations of larger and smaller sizes of plug tobacco, while the fourth or upper side forms a kind of open panel for the firm name &c., all as shown." This is designed as a trade-mark for plug and fine cut smoking and chewing tobacco. The Examiner has denied the registration upon the ground that this mark "is not an arbitrary symbol, but a purely descriptive one for the simple reason that it is a very common expedient for tradesmen to affix to boxes and packages containing their goods descriptive symbols of what is contained therein."

Undoubtedly any manufacturer of tobacco would be entitled to stamp upon his packages symbols descriptive of the articles contained therein. Applicants have, however, done something more than this. They have arranged these descriptive symbols into

an arbitrary design, which, in my judgment, when placed upon their wares will serve to readily distinguish them from the goods of another. This design will accomplish the office of a valid trade-mark, and applicants are entitled to the registration asked.

The decision of the Examiner of Trade-Marks is reversed.

A P P L I C A T I O N
of
E. A S C H E R M A N N & C O.,

Decided Oct. 12, 1880.

Recorded Vol. 21, Page 396.

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MARBLE, COMMISSIONER:

Applicants in this case seek to register the words "Blunt Heads" as a trade-mark for cigars. The Examiner has denied the registry upon the ground that these words are descriptive. This case is analogous to that of ex parte Hayman, decided May 31, 1880, (MS. appeal cases.) In my judgment the primary signification which the public would attach to these words would be a fanciful, and not a descriptive one, and they would, therefore, fulfill the office of a valid trade-mark in distinguishing in the market the particular goods upon which they were placed.

The decision of the Examiner of Trade-Marks is reversed.

THE HISTORY OF

THE CITY OF BOSTON

FROM 1630 TO 1830

BY J. B. BOWEN

IN TWO VOLUMES.

VOLUME II.

THE HISTORY OF

THE CITY OF BOSTON

FROM 1630 TO 1830

BY J. B. BOWEN

IN TWO VOLUMES.

VOLUME II.

THE HISTORY OF

THE CITY OF BOSTON

FROM 1630 TO 1830

BY J. B. BOWEN

THE HISTORY OF THE

REIGN OF

CHARLES THE FIRST

BY

JOHN BURNET

OF THE UNIVERSITY OF OXFORD

IN TWO VOLUMES

VOLUME THE SECOND

LONDON

PRINTED BY J. STAMPA

IN THE YEAR 1704

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A P P L I C A T I O N
of
M A U R I C E G A N D Y,

Decided Oct. 22, 1880.

Recorded Vol. 21, Page 407.

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MARBLE, COMMISSIONER:

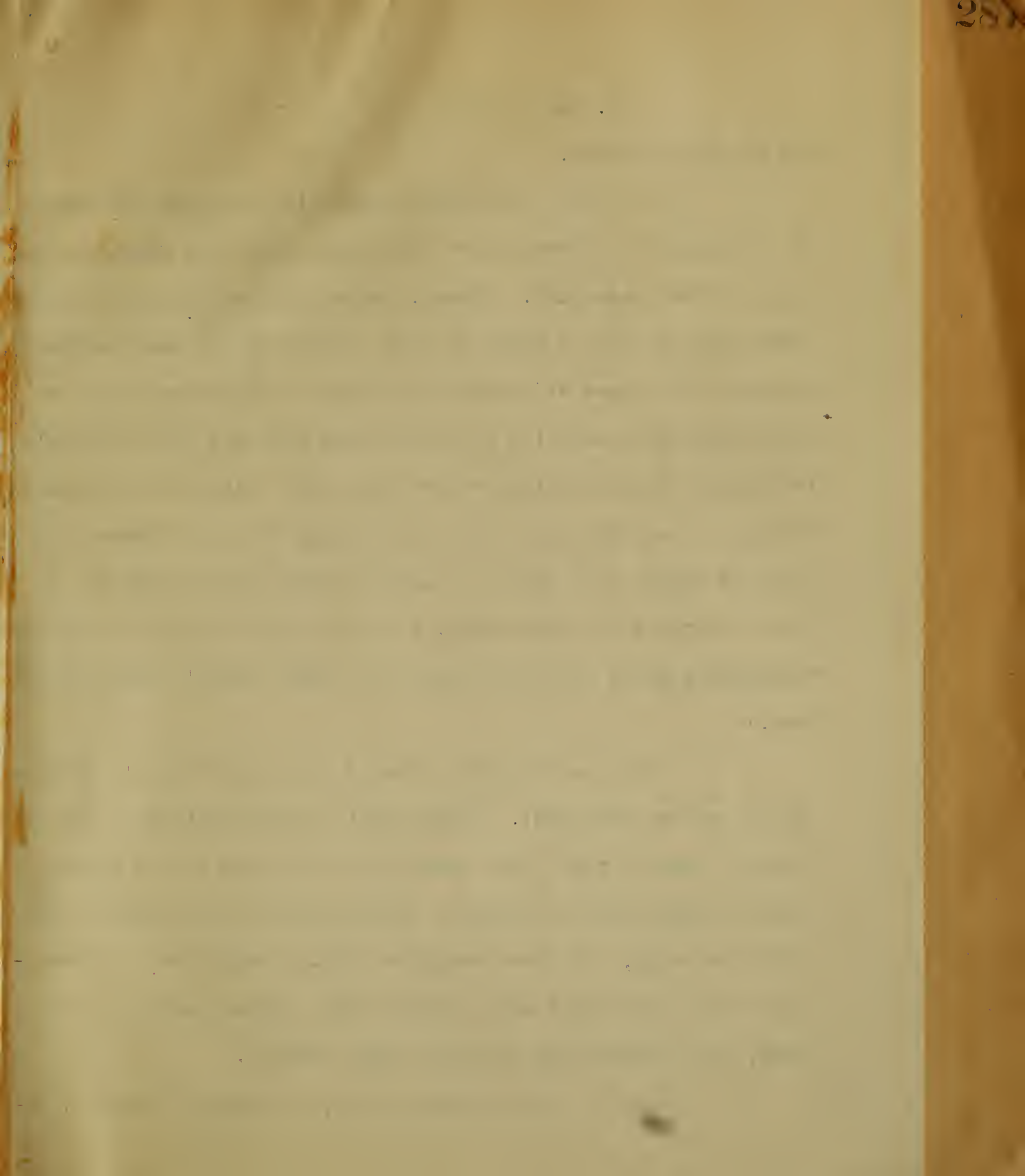
Applicant in his specification states that "the essential elements of his trade-mark consist of the figure of a coil of belting with a bale of cotton laid across it and the words "Gandy's Belting" printed upon the bale." The Examiner has withheld the registration for the reason that, in his judgment, the words "Gandy's Belting" cannot properly be said to constitute an essential feature of the mark. The attorney for applicant appears to regard these words as essential in order that the mark may properly indicate origin or ownership of the goods to which they are to be attached. In this regard I think he is clearly in error.

I had occasion to state in the recent case of Farnham & Co., 18 O G., 412, that the essential features of a trade mark are those only which serve in whole or in part to distinguish the goods of the party by whom such mark is adopted, and it is not proper that anything should be described as essential which the courts

would hold otherwise.

As stated by Commissioner Leggett in the case of the Dutcher Temple Co., C.D., 1871, p. 248, "A careful reading of the decisions will show that the courts have held with very great unanimity that the person's name or place are neither absolutely essential to the validity of a trade-mark. If it possesses the evidence on its face that it is put forth or given out as a distinguishing mark of the goods to which it is attached, that is, distinguishing as to origin and not as to kind or quality, it may have all the requisites of a valid trade-mark without naming the person or place whence it came. The very fact that it bears evidence of its being the manufacturer's or dealer's private mark by means of which his goods are distinguished in the market is sufficient indication of origin to warn against copying by competing dealers and this answers the public demand." (See also Brown on Trade-Marks, Section 151.)

Section 4939 of the Revised Statutes prescribes "That the Commissioner shall not receive and record any proposed trade-mark which is not and cannot become a lawful trade-mark, or which is merely the name of a person, firm, or corporation unaccompanied by a mark sufficient to distinguish it from the same name when us-



"ed by other persons."

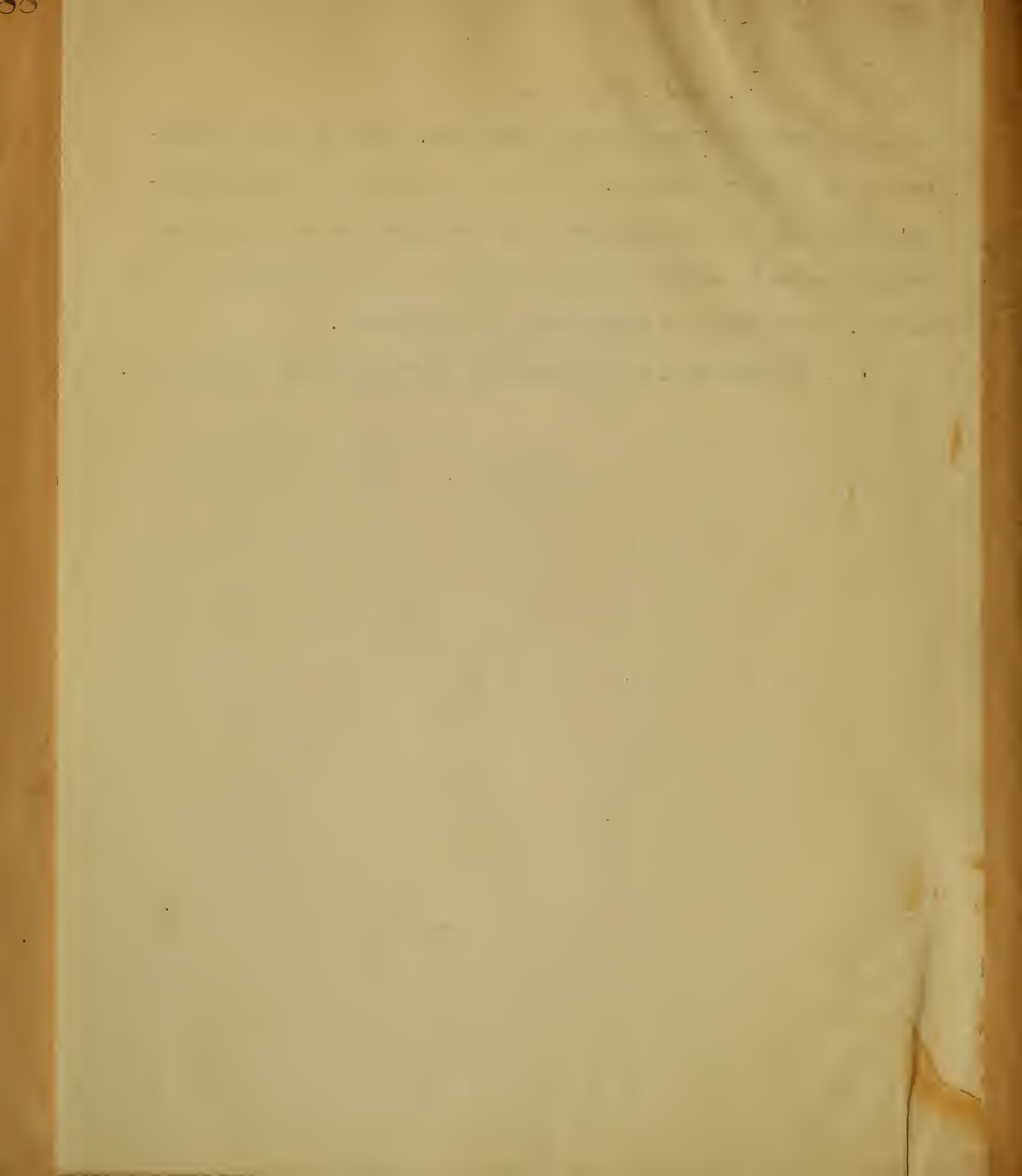
It is this mark which accompanies the name and serves to distinguish it from others that constitutes the essential feature of the trade-mark. Indeed, counsel for applicant in his argument would seem to admit as much, for he states that "another person of the name of Gandy might engage in the manufacture of belts and would have the right to stamp upon his goods "Gandy's Belting" without infringing the trade-mark, but if he stamped on his goods the figure of a coil of belting with the figure of a bale of cotton laid across it and the words on the figure, he would infringe the trade-mark, because he would then use the accompanying marks that distinguish the other maker's name from his own."

I cannot, therefore, regard the words "Gandy's Belting" as in any way essential. If applicant is not entitled to the mark without these words, then, under the very terms of the statute, as well as admissions of counsel, he could not be entitled to them with the words, for there would be nothing sufficient to distinguish applicants mark when used by other persons having a like name, and consequently an equal right thereto.

There is here no combination, as urged by counsel, be-

tween the name and peculiar mark employed. The two would be regarded as totally distinct, the words indicating the manufacturer's name and the article made, and the symbol constituting the fanciful mark by which such goods were to be distinguished in the market. (See Brown on Trade-Marks, Section 346).

The decision of the Examiner of Trade-Marks is affirmed.



Label

A P P L I C A T I O N
of
B R O W N B R O S. & C O.,

Decided Dec. 10, 1880.

Recorded Vol. 21, Page 482

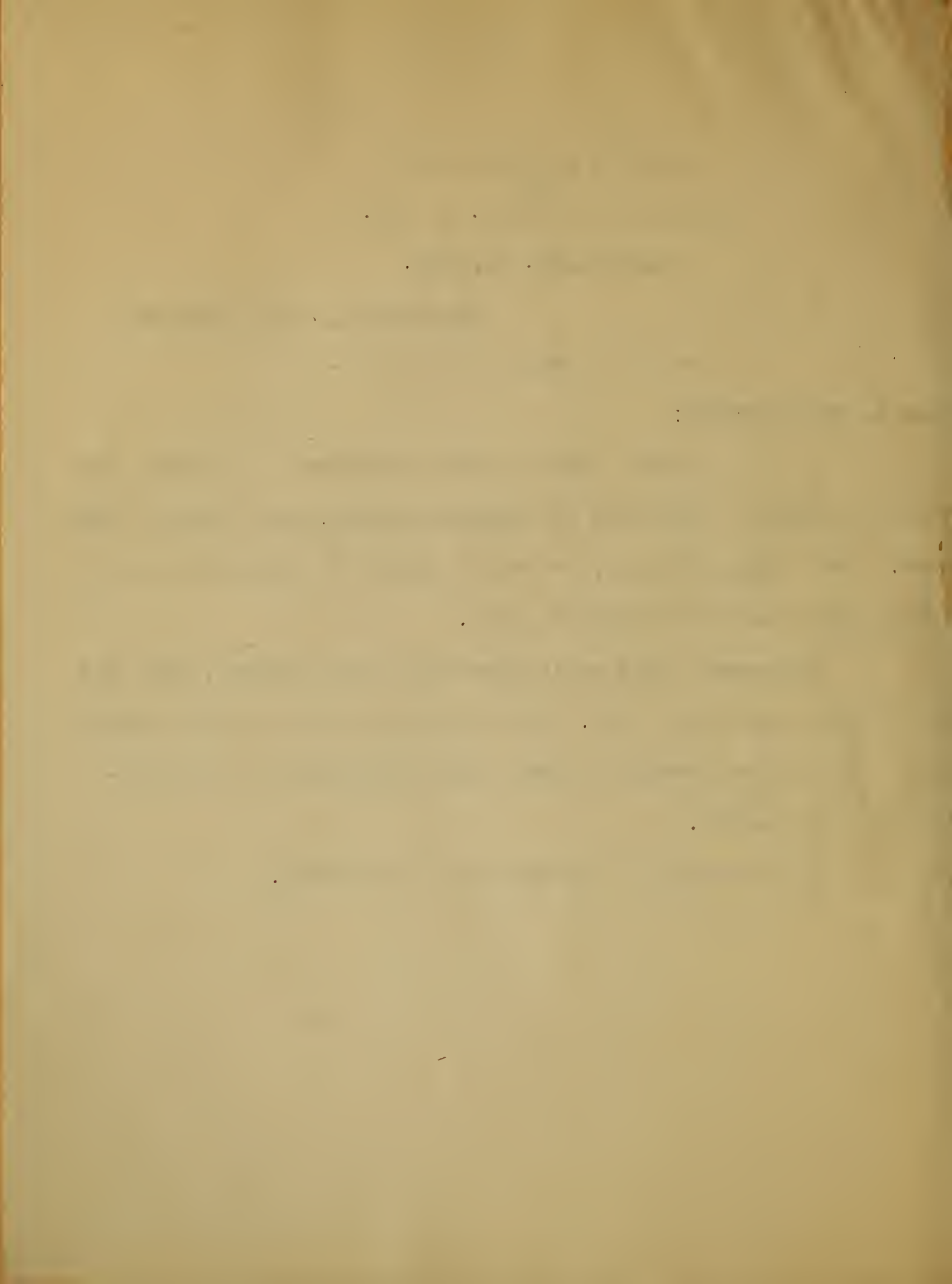
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MARBLE, COMMISSIONER:

I have no doubt that the word "Premium" is fanciful and that the XXXX are arbitrary and together constitute a lawful trade mark. This being the case, the whole cannot be registered as a label under the act of June 16, 1874.

The cases cited by the Examiner in his answer, each and all of them, cover the case. The matter has been so often decided that I refer those cases as a more full discussion of the questions herein raised.

The decision of the Examiner is affirmed.



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US PATENT & TRADEMARK OFFICE



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